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

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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

WASHINGTON, DC

WHEN: January 30, at 9:00 a.m.

WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: 202–523–5240.

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 534

Performance Awards in the Senior Executive Service

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: OPM is issuing final regulations to require that Senior Executive Service (SES) Performance Review Boards be composed of a majority of career SES members when making recommendations on performance awards for career SES appointees. This will make the membership requirement the same as for when the Boards make recommendations on performance appraisals of career SES appointees.

EFFECTIVE DATE: January 16, 1990.

FOR FURTHER INFORMATION CONTACT: Neal Harwood, (202) 632–4486.

SUPPLEMENTARY INFORMATION: On August 29, 1989, OPM published proposed regulations (54 FR 35654) providing that SES Performance Review Boards must be composed of a majority of career SES members when making recommendations on performance awards for career SES appointees, unless OPM determines that there exists an insufficient number of career members available to comply with the requirement. The comment period, which was 30 days from the date of publication, ended on September 28, 1989. No comments were received.

In the meantime, Congress in section 625(a) of the FY 1990 Treasury, Postal Service and General Government Appropriations bill (H.R. 2989) amended 5 U.S.C. 5384(c) to place a similar requirement in statute. The President signed the bill on November 3, 1989 (Pub. L. 101–136). The amendment to 5 U.S.C. 5384(c) was effective upon signature.

Since the provisions of the proposed regulations and section 625(a) of Public Law 101–136 are the same, and since there were no comments on the proposed regulations, the final regulations are issued without change. It should be noted that § 430.307(d) of title 5 of the Code of Federal Regulations already provides that Performance Review Boards must contain a majority of career SES members when making recommendations on performance appraisals for career SES appointees.

Pursuant to section 553(d) of title 5, United States Code, the Director finds that good cause exists for making this amendment effective in less than 30 days, in order to cover Performance Review Boards that are making recommendations on SES performance awards for career appointees in agencies where the performance appraisal period ended at the end of FY 1989.

E.O. 12291. Federal Regulation

I have determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it deals with the SES employees of the Federal Government.

List of Subjects in 5 CFR Part 534

Government employees, Wages.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is amending 5 CFR part 534 as follows:

PART 534—PAY UNDER OTHER SYSTEMS

1. The authority for part 534 continues to read as follows:

Authority: 5 U.S.C. 1104, 5351, 5352, 5353, 5361, 5383, 5384, 5385, and 5541.

2. The heading for subpart D is revised and § 534.403(a) is revised to read as follows:

Subpart D—Pay and Performance Awards Under the Senior Executive Service

§ 534.403 Performance awards.

(a) This section covers the payment of performance awards to career appointees in the Senior Executive Service (SES).

(1) To be eligible for an award, the appointee's most recent performance rating of record under part 430, subpart C, of this chapter must have been "Fully Successful" or higher.

(2) When making recommendations on performance awards, more than one-half of the membership of a Performance Review Board must be career SES appointees. The only exception is if OPM has determined under § 430.307(d) of this chapter that the Board does not have to have a majority of career members when making recommendations on performance appraisals of career appointees because there exists an insufficient number of career appointees.

* * * * *

[FR Doc. 89–907 Filed 1–12–89; 8:45 am]
BILLING CODE 6325–01–M

5 CFR Part 550

Pay Differentials

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This final rule authorizes a hazard/physical hardship pay differential of 25 percent to employees who are working in undeveloped tropical jungle regions outside the continental United States and who are exposed to unusual physical hardships and hazards. This rule is required by Public Law 89–512, which established hazardous duty pay for General Schedule employees.

EFFECTIVE DATE: February 15, 1990.

FOR FURTHER INFORMATION CONTACT: Clarence Mathews (202) 632–7858.

SUPPLEMENTARY INFORMATION: On June 14, 1989, OPM published an interim rule in the **Federal Register** (54 FR 25223) which established a hazard/physical hardship pay differential category for employees who are working in undeveloped tropical jungle regions outside the continental United States and who are exposed to unusual

physical hardships such as high heat and humidity, and unusual hazards such as poisonous snakes and insects, diseases and dangerous terrain. The pay differential was set at 25 percent, and the interim rule was effective as of June 14, 1989.

OPM received one written response to the interim rule from the Department of Agriculture concerning the definition of the term "undeveloped tropical jungle regions." Agriculture recommended that the term be changed to "natural tropical forests."

After careful consideration of the comments from the Department of Agriculture, OPM has decided not to change or amend the interim rule. We believe that the term "undeveloped tropical jungle regions" is more appropriate to describe the tropical environment that the requesting Agency wants covered, is more easily defined, and is more clearly understood by the GS/GM personnel administering or affected by the policy.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they are changes which will affect only employees of the Federal Government.

Office of Personnel Management.

Constance Berry Newman,

Director.

PART 550—PAY ADMINISTRATION (GENERAL)

Accordingly, the interim rule amending Appendix A to subpart I, part 550, 5 CFR, that was published in 54 FR 25223 on June 14, 1989, is adopted as final without change.

[FR Doc. 90–911 Filed 1–12–90; 8:45 am]

BILLING CODE 6325–01–M

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5 CFR Part 581

RIN 3206–AB42

Processing Garnishment Orders for Child Support and/or Alimony

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is amending its regulations concerning the processing of garnishment orders for child support and/or alimony. The amendments reflect a fundamental change concerning the garnishment for attorney fees, interest, and court costs. The amendments also revise the garnishment regulations in response to the establishment of the Thrift Savings Fund. In addition, the list of designated agents (Appendix A) has been brought up to date.

EFFECTIVE DATE: February 15, 1990.

FOR FURTHER INFORMATION CONTACT: Murray M. Meeker, (202) 632–5090.

SUPPLEMENTARY INFORMATION: These amendments follow two separate notices of proposed rulemaking. The first notice of proposed rulemaking was published on April 28, 1986 (51 FR 15787) to implement a revised Justice Department interpretation of the statutory provisions concerning the garnishment for attorney fees. OPM was initially advised of the revised statutory interpretation by the Civil Division of the Justice Department. Subsequent to the notice of proposed rulemaking, OPM received additional guidance in an opinion issued by the Office of Legal Counsel (OLC) of the Justice Department. In addition to the OLC opinion, OPM received five written substantive comments to the 1986 notice: One comment was received from an employee organization; one comment was received from a Federal agency; one comment was received from a State agency; the fourth comment was received from an official of a State court; and the fifth amendment was received from a family support enforcement organization.

The employee organization's letter stated as follows:

> Attorney's fees, interest and court costs are part and parcel of the basic amount(s) awarded as child support payment. Hence, a plaintiff who has successfully proven his (her) right to child support, should have the remedy to recover these items through the same garnishment process that is available for recovering the amount(s) awarded as child support. For this reason, we support the change.

It must be noted that this statement reflects a critical misunderstanding of the amendments. In fact, the amendments provide that attorney fees, interest, and court costs will only be subject to garnishment if they are considered to be actual child support or alimony rather than amounts to be garnished in addition to the child support or alimony. Because of OPM's concern that the proposed changes may have been misunderstood by a significant number of affected persons, OPM has further revised the definitions of child support and alimony in 5 CFR 581.102(d) and (e). In addition, OPM has added a new section, 5 CFR 581.307, that provides express clarification and guidance concerning the processing of legal process that includes an award of attorney fees, interest, and/or court costs.

The employee organization also suggested that OPM further amend the proposed definition of "legal obligation" in 5 CFR 581.102. However, the suggested change would have defeated the purpose of the amendment which is to clarify that there are differences between jurisdictions concerning the garnishment of current (rather than past due) alimony. To say that a "legal obligation" must include current as well as past due alimony and/or child support debts as requested by the employee organization would have been erroneous and contrary to our purpose.

The second comment was from a Federal agency. OPM has adopted the Federal agency's suggestion that the statement of purpose in 5 CFR 581.101 and the definition of "legal process" in 5 CFR 581.102(f) be amended. The Federal agency also suggested that OPM revise 5 CFR 581.306(c) to broaden the information that would be provided when Federal employee obligors separate from their Federal employment. OPM has adopted this suggestion. However, two of the Federal agency's suggestions concerned amendments to 5 CFR 581.301 were not adopted. The Federal agency suggested the establishment of shorter time limits for complying with legal process. OPM believes that this suggestion is contrary to the statutory time limits already provided in 42 U.S.C. 659(d).

The Federal agency also suggested that a sentence be added to § 581.301 to expressly state that legal process for child support and/or alimony be given priority "over any other legal process under State law against the same wages." However, except for the Postal Service and a relatively small number of other Federal entities, the Federal Government is not authorized under Federal law to comply with "other legal process [issued] under State law." Thus, we believe that the suggestion would have resulted in more confusion than assistance. It should also be noted that Title 6 (Pay, Leave, and Allowances) of the General Accounting Office's Manual for Guidance of Federal Agencies already includes an order of precedence for disbursement of pay.

The third comment was from a State agency. The State agency correctly discerned that the amendment would limit the circumstances in which

attorneys who represent former spouses and dependent children would be able to collect their fees, and that as a consequence it might be more difficult for former spouses and children to find adequate legal representation. However, the State agency expressed support for the amendment because "it should allow more children and/or former spouses to receive the full amount of support," unreduced—in instances where the maximum amount is being garnished—by attorney fees.

The fourth comment was received from a State court probation department official who expressed opposition to the proposal, not because it might make it more difficult for former spouses and dependent children to obtain legal counsel, but because of the fear that the amendment would result in an increase in the number of court orders that awarded attorney fees as alimony or child support and a concomitant fear that courts would more frequently order enforcement of such payments through a probation department, thereby increasing the workload of State court probation departments and undercutting the effectiveness of the child support enforcement program.

OPM would respond only that the Federal statutory garnishment provisions (42 U.S.C. 662(b) and (c)) expressly refer to the recovery of attorney fees, and that OPM has been directed to implement these provisions (42 U.S.C. 661(a)(1) and Executive Order No. 12105 (1978)). OPM is, therefore, obligated to provide guidance to the executive branch concerning the processing of legal process, including the circumstances under which a Federal agency may withhold from a Federal employee obligor's salary an amount for attorney fees, interest, and/or court costs. While it is anticipated that the amendment will greatly reduce the number of attorney fee awards that will be honored by the Federal Government, OPM is unable to predict how the amendment will affect the workload of probation departments in various State courts.

The final commentor, a representative of a family support enforcement organization, wrote in support of 5 CFR 581.305(g) which clarifies the fact that there is no requirement under part 581, that parties bringing garnishment actions against the Federal Government comply with the provisions of either the Uniform Reciprocal Enforcement of Support Act or the Revised Uniform Reciprocal Enforcement of Support Act.

The second notice of proposed rulemaking was published on September 6, 1988 (53 FR 34305). These amendments were made necessary by the enactment of the Federal Employees' Retirement System Act of 1986, Public Law 99-335 (June 6, 1986), which provided, among other things, for contributions from the salaries of Federal employees for the Thrift Savings Fund. Because all contributions to the Thrift Savings Fund, including Government contributions, are subject to garnishment in accordance with 5 U.S.C. 8437(e), the Federal Retirement Thrift Investment Board has recommended that Thrift Savings Fund contributions be excluded in determining the obligor's "aggregate disposable earnings". See 5 CFR 581.105(e). The Board's recommendation has been adopted in these amendments.

OPM received only one substantive written comment in response to the second notice of proposed rulemaking. The comment was from a Federal agency and expressed support for the proposed amendment.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have significant economic impact on a substantial number of small entities because their effects are limited primarily to Federal employees.

List of Subjects in 5 CFR Part 581

Alimony, Child welfare, Government employees, Wages.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is amending 5 CFR part 581 as follows:

PART 581—PROCESSING GARNISHMENT ORDERS FOR CHILD SUPPORT AND/OR ALIMONY

1. The authority citation for part 581 is revised to read as follows:

Authority: 42 U.S.C. 659, 661–662; 15 U.S.C. 1673; 5 U.S.C. 8437; E.O. 12105.

2. Section 581.101 is revised to read as follows:

§ 581.101 Purpose.

Section 659 of title 42 of the United States Code, as amended, provides that moneys, the entitlement to which is based upon remuneration for employment, due from, or payable by, the United States or the District of Columbia to any individual, shall be subject, as if the United States or the District of Columbia were a private person, to legal process brought for the enforcement of such individual's legal obligations to provide child support and/or make alimony payments. Section 666 (a)(1) and (b) of title 42 of the United States Code requires States to enact laws mandating the use of procedures for the withholding from income of amounts payable as support. The purpose of this part is to implement the objectives of sections 659 and 666 (a)(1) and (b) as they pertain to the executive branch of the Government of the United States.

3. Section 581.102, is amended by revising paragraphs (d), (e), (f)(1)(iii) and (g), and adding paragraph (f)(1)(iv) to read as follows:

§ 581.102 Definitions.

* * * * *

(d) *Child support* means periodic payments of funds for the support and maintenance of a child or children, and, subject to and in accordance with State or local law, includes, but is not limited to, payments to provide for health care, education, recreation, clothing, or to meet other specific needs of such a child or children. Child support also includes attorney's fees, interest, and court costs, but only if these items are expressly made recoverable as child support under a decree, order, or judgment issued in accordance with applicable State or local law by a court of competent jurisdiction.

(e) *Alimony* means periodic payments of funds for the support and maintenance of a spouse or former spouse, and, subject to and in accordance with State or local law, includes, but is not limited to, separate maintenance, alimony pendente lite, maintenance, and spousal support. Alimony also includes attorney's fees, interest, and court costs, but only if these items are expressly made recoverable as alimony under a decree, order, or judgment issued in accordance with applicable State or local law by a court of competent jurisdiction. This term does not include any payment or transfer of property or its value by an individual to his or her spouse or former spouse in compliance with any community property settlement, equitable distribution of property, or other division of property between spouses or former spouses. (See instead 5 U.S.C. 8345(j) and 5 CFR part 831, subpart Q.)

(f) * * *

(1) * * *

(iii) An authorized official pursuant to an order of a court of competent jurisdiction or pursuant to State or local law; or

(iv) A State agency authorized to issue income withholding notices pursuant to

State or local law or pursuant to the requirements of section 666(b) to title 42 of the United States Code; and

* * * * *

(g) *Legal obligation* means an obligation to pay alimony and/or child support that is enforceable under appropriate State or local law. A legal obligation may include current as well as past due alimony and/or child support debts depending on the law in the jurisdiction from which the legal process was issued.

4. In § 581.103, the introductory text of paragraph (a) is republished, and paragraphs (a)(23), (a)(23)(iv), and (c) are revised to read as follows:

§ 581.103 Moneys which are subject to garnishment.

(a) For the personal service of a civilian employee obligor:

* * * * *

(23) Moneys due for the services of a deceased employee obligor, including:

* * * * *

(iv) Retroactive pay as provided for in section 5344(b)(2) of title 5 of the United States Code; and

* * * * *

(c) For obligors generally. (1) Periodic benefits, including a periodic benefit as defined in section 428(h)(3) of title 42 of the United States Code, title II of the Social Security Act, to include a benefit payable in a lump sum if it is commutation of, or a substitute for, periodic payments; or other payments to these individuals under the programs established by subchapter II of chapter 7 of title 42 of the United States Code (Social Security Act) and by chapter 9 of title 45 of the United States Code (Railroad Retirement Act) or any other system, plan, or fund established by the United States (as defined in section 662(a) of title 42 of the United States Code) which provides for the payment of:

(i) Pensions;

(ii) Retirement benefits;

(iii) Retired/retainer pay;

(iv) Annuities; and

(v) Dependents' or survivors' benefits when payable to the obligor;

(2) Refunds of retirement contributions where an application has been filed;

(3) Employee contributions and Government contributions to the obligor's Thrift Savings Fund account in accordance with section 8437(e) of title 5 of the United States Code;

(4) Amounts received under any Federal program for compensation for work injuries; and

(5) Benefits received under the Longshoremen's and Harbor Workers' Compensation Act.

(6) Exceptions. Remuneration would not include:

(i) Any payment as compensation for death, including any lump sum death benefit under any Federal program;

(ii) Any payment under any Federal program established to provide "black lung" benefits;

(iii) Any payment by the Department of Veterans Affairs as pension; or

(iv) Any payment by the Department of Veterans Affairs as compensation for a service-connected disability or death, except any compensation paid by the Department of Veterans Affairs to a former member of the Armed Forces who is in receipt of retired or retainer pay if such former member has waived a portion of his/her retired pay in order to receive such compensation. In this case, only that part of the Department of Veterans Affairs payment that is in lieu of the waived retired/retainer pay is subject to garnishment. Payments of disability compensation by the Department of Veterans Affairs to an individual whose entitlement to disability compensation is greater than his/her entitlement to retired pay, and who has waived all of his/her retired pay in favor of disability compensation, are not subject to garnishment under this part.

5. In § 581.104, paragraphs (b), (c), and (f) are revised to read as follows:

§ 581.104 Moneys which are not subject to garnishment.

* * * * *

(b) Payments or portions of payments made by the Department of Veterans Affairs pursuant to sections 501–562 of title 38 of the United States Code, in which the entitlement of the payee is based on non-service-connected disability or death, age, and need;

(c) Refunds and other payments made in connection with overpayments or erroneous payments of income tax and other taxes levied under title 26 of the United States Code;

* * * * *

(f) Veterans' educational assistance payments under section 1651 et seq., of title 38 of the United States Code;

* * * * *

6. In § 581.105, the introductory text and paragraphs (a) are revised, the introductory text of paragraph (b) is republished, paragraphs (b)(3) and (b)(4) are revised, paragraph (b)(5) is added, and paragraph (e) is revised to read as follows:

§ 581.105 Exclusions.

In determining the amount of any "moneys due from, or payable by, the United States" to any individual, there shall be excluded amounts which:

(a) Are owed by the individual to the United States, except where the obligor's debt is for child support and the amount owed the United States results from an income tax lien or levy under section 6331 of title 26 of the United States Code;

(b) Are required by law to be deducted from the remuneration or other payment involved, including, but not limited to:

* * * * *

(3) Amounts mandatorily withheld for the United States Soldiers' and Airmen's Home;

(4) Fines and forfeitures ordered by a court-martial or by a commanding officer; and

(5) Amounts deducted for Medicare;

* * * * *

(e) Are deducted as normal retirement contributions, not including amounts deducted for supplementary coverage. For purposes of this section, all amounts contributed under sections 8351 and 8432(a) of title 5 of the United States Code to the Thrift Savings Fund are deemed to be normal retirement contributions. Amounts withheld as Survivor Benefit Plan or Retired Serviceman's Family Protection Plan payments are considered to be normal retirement contributions. Except as provided in this paragraph, amounts voluntarily contributed toward additional retirement benefits are considered to be supplementary; or

* * * * *

7. In § 581.201, paragraph (b) introductory text is revised to read as follows:

§ 581.201 Agent to receive process.

* * * * *

(b) The head of each governmental entity shall submit to the Office of the General Counsel, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, for publication in Appendix A to this part, the following information concerning the agent(s) designated to accept service of process:

* * * * *

8. In § 581.202, paragraph (c) is revised to read as follows:

§ 581.202 Service of process.

* * * * *

(c) Where it does not appear from the face of the process that it has been brought to enforce the legal obligation(s) defined in § 581.202(d) and/or (e), the

process must be accompanied by a certified copy of the court order or other document establishing such legal obligation(s).

* * * * *

9. In § 581.203, paragraph (a)(3) is revised to read as follows:

§ 581.203 Information minimally required to accompany legal process.

(a) * * *

(3) Employment number, social security number, Department of Veterans Affairs claim number, or civil service retirement claim number;

* * * * *

10. In § 581.305, the introductory text of paragraph (a) is republished; paragraphs (a) (4) and (5) are revised; paragraphs (b), (c), (d), (e), and (f) are redesignated as (c), (d), (e), (f), and (g) respectively; paragraph (a)(6) is redesignated as paragraph (b) and is revised; paragraph (c) is revised, and a new paragraph (h) is added to read as follows:

§ 581.305 Honoring legal process.

(a) The governmental entity shall comply with legal process, except where the process cannot be complied with because:

* * * * *

(4) It does not comply with the mandatory provisions of this part; or

(5) An order of a court of competent jurisdiction enjoining or suspending the operation of the legal process has been served on the governmental entity.

(b) Where notice is received that the obligor has appealed either the legal process or the underlying alimony and/or child support order, payment of moneys subject to the legal process shall be suspended; i.e., moneys shall continue to be withheld, but these amounts shall be retained by the governmental entity until the entity is ordered by the court, or other authority, to resume payments or otherwise disburse the suspended amounts. However, no suspension action shall be taken where the applicable law of the jurisdiction wherein the appeal is filed requires compliance with the legal process while an appeal is pending. Where the legal process has been issued by a court in the District of Columbia, a motion to quash shall be deemed equivalent to an appeal.

(c) Under the circumstances set forth in § 581.305 (a) or (b), or where the governmental entity is directed by the Justice Department not to comply with the legal process, the entity shall respond directly to the court, or other authority, setting forth its objections to compliance with the legal process. In addition, the governmental entity shall inform the party who caused the legal process to be served, or the party's representative, that the legal process will not be honored. Thereafter, if litigation is initiated or threatened, the entity shall immediately refer the matter to the United States Attorney for the district from which the legal process issued. To ensure uniformity in the executive branch, governmental entities which have statutory authority to represent themselves in court shall coordinate their representation with the United States Attorney.

* * * * *

(h) A failure by the party bringing the garnishment action to comply with the provisions of the Uniform Reciprocal Enforcement of Support Act (URESA) or the Revised Uniform Reciprocal Enforcement of Support Act by itself shall not be a valid basis for a governmental entity to refuse to comply with legal process.

11. In § 581.306, paragraph (c) is revised to read as follows:

§ 581.306 Lack of moneys due from, or payable by, a governmental entity served with legal process.

* * * * *

(c) In instances where an employee obligor separates from his/her employment with a governmental entity which is presently honoring a continuing legal process, the entity shall inform the party who caused the legal process to be served, or the party's representative, and the court or other authority that issued the legal process, that the payments are being discontinued. In cases where the obligor has retired, or separated and requested a refund of retirement contributions, or transferred, or is receiving benefits under the Federal Employee's Compensation Act, and where this information is known by the entity, the entity shall provide the party with the designated agent for the new disbursing governmental entity. If the employee obligor will be employed in the private sector and the governmental entity knows the name and/or address of the new employer, the governmental entity will provide the party with this information.

12. Section 581.307 is added to read as follows:

§ 581.307 Compliance with legal process requiring the payment of attorney fees, interest, and/or court costs.

Before complying with legal process that requires withholding for the payment of attorney fees, interest, and/or court costs, the governmental entity must determine that the legal process meets both of the following requirements:

(a) The legal process must expressly provide for inclusion of attorney fees, interest, and/or court costs as (rather than in addition to) child support and/or alimony payments;

(b) The awarding of attorney fees, interest, and/or court costs as child support and/or alimony must be within the authority of the court, authorized official, or authorized State agency that issued the legal process. It will be deemed to be within the authority of the court, authorized official, or authorized State agency to award attorney fees as child support and/or alimony if such order is not in violation of or inconsistent with State or local law, even if State or local law does not expressly provide for such an award.

13. Appendix A to part 581 is revised to read as follows:

Appendix A To Part 581—List of Agents Designated To Accept Legal Process

[This appendix lists the agents designated to accept legal process for the executive branch of the United States, the United States Postal Service, the Postal Rate Commission, the District of Columbia, American Samoa, Guam, the Virgin Islands, and the Smithsonian Institution.]

I. DEPARTMENTS

Department of Agriculture

General Counsel, Department of Agriculture, 14th & Independence Ave., SW., Washington, DC 20250; (202) 447–3351.

Department of Commerce

1. For employee obligors in the Office of the Secretary, Economic Development Administration, Bureau of Economic Analysis, Minority Business Development Agency, National Technical Information Service, National Telecommunications and Information Administration, Bureau of Export Administration, and United States Travel and Tourism Administration: Personnel Officer, Office of Personnel Operations, Office of the Secretary, Room 5005, 14th and Constitution Avenue NW., Washington, DC 20230, (202) 377–3827.

2. Bureau of the Census: Chief, Personnel Employment Branch, Room 3254, FOB #3, Washington, DC 20230, (301) 763–1520.

3. National Oceanic and Atmospheric Administration: Director of the Office of Administration, National Oceanic and Atmospheric Administration, Room 6863, 14th and Constitution Avenue NW., Washington, DC 20230, (202) 377–8900.

4. Patent and Trademark Office: Chief, Employee Relations Branch, Suite 225, 2101 Crystal Plaza Arcade, Arlington, VA 22202, (703) 557–3643.

5. National Bureau of Standards: Personnel Officer, Personnel Office, Room A–123, Administration Building, Gaithersburg, MD 20899, (301) 975–3000.

6. International Trade Administration: Director, Personnel Management Division,

Room 4222, 14th and Constitution Avenue NW., Washington, DC 20230, (202) 377–1533.

7. In cases where the name of the operating unit in the Department of Commerce cannot be ascertained: Director of Personnel, Department of Commerce, Room 5001, 14th and Constitution Avenue NW., Washington, DC 20230, (202) 377–4807.

Department of Defense

Army

a. Civilian employees in Germany: Commander, 266th Theater Finance Corps, Attention: AEUCF–CPF, APO New York 09007–0137, 049–6221–57–8911, Autovon: 370–8911.

b. Nonappropriated fund civilian employees of the Army Post Exchanges: Army and Air Force Exchange Service, Attention: CM–G–RI, P.O. Box 650038, Dallas, TX 75265, (214) 780–2005 or (214) 780–3111.

c. All other Army personnel: Commander, Army Finance and Accounting Center, Attention: FINCL–G, Indianapolis, IN 46249–0160.

Navy

All personnel: Director, Navy Family Allowance Activity, Anthony J. Celebrezze Federal Building, Cleveland, OH 44199–2087, (216) 522–5301.

Marine Corps

All personnel: Commanding Officer, Marine Corps Finance Center (Code OC), Kansas City, MO 64197–0001, (816) 926–7103.

Air Force

1. Active duty, Reserve, Air National Guard (ANG), retired military members and civilian employees of appropriated fund activities: Commander, Air Force Accounting and Finance Center, Attention: JA, Denver, CO 80279–5000, (303) 370–7524.

2. Nonappropriated fund civilian employees of base exchanges: Army and Air Force Exchange Service, Attention: CM–G–RI, P.O. Box 650038, Dallas, TX 75236–0038, (214) 780–2005 or (214) 780–3111.

3. Civilian employees of all other Air Force nonappropriated fund activities: AFMPC/JA, Attention: NAF Law Division, Randolph AFB, TX 78150, (516) 652–6691.

Defense Advance Research Project Agency

Air Force District of Washington, Accounting and Finance Office, Attention: 15DA, Washington, DC 20332–5260, (202) 767–4211.

Defense Communications Agency

General Counsel or Deputy General Counsel, Office of the General Counsel (Code 105), Defense Communications Agency, Washington, DC 20305; (202) 692–2009.

Defense Contract Audit Agency

Director of Personnel, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178, (202) 274–7325.

Defense Intelligence Agency

General Counsel, Defense Intelligence Agency, The Pentagon, Washington, DC 20340–1029, (202) 697–3945.

Defense Investigative Service

Deputy Director (Resources), Defense Investigative Service, 1900 Half Street SW., Washington, DC 20324–1700, (202) 475–1311.

Defense Logistics Agency

Accounting & Finance Officer (DCSC–CF), Defense Construction Supply Center, Columbus, OH 43216–5000, (614) 238–3161

Accounting & Finance Officer (DESC–CF), Defense Electronics Supply Center, 1507 Wilmington Pike, Dayton, OH 45444–5000, (513) 296–6415

Command Security Officer, Defense General Supply Center (DGSC–I), Richmond, VA 23297–5000, (804) 275–4751

Accounting & Finance Officer (DPSC–ZA), Defense Personnel Support Center, 2800 South 20th Street, Philadelphia, PA 19101–8419, (215) 952–2741

Accounting & Finance Officer (DDMP–BD), Defense Depot Mechanicsburg, Mechanicsburg, PA 17055–0789, (717) 790–5099

Accounting & Finance Officer (DDMT–FD), Defense Depot Memphis, 2163 Airways Boulevard, Memphis, TN 38114–5297, (901) 744–6541

Accounting & Finance Officer (DDOU–CF), Defense Depot Ogden, Ogden, UT 84407–5000, (801) 399–7358

Accounting & Finance Officer (DDTC–GD), Defense Depot Tracy, S. Chrisman Road, Tracy, CA 95376–5000, (209) 832–9259

Accounting & Finance Officer (DASC–F), Cameron Station, Alexandria, VA 22304–6130, (202) 274–6108

Accounting & Finance Officer (DCASR–ATL–CF), Defense Contract Administration Services Region, Atlanta, 805 Walker Street, Marietta, GA 30060–2789, (404) 429–6369

Accounting & Finance Officer (DCASR–BOS–CF), Defense Contract Administration Services Region, Boston, 495 Summer Street, Boston, MA 02210–4335, (617) 429–4392

Accounting & Finance Officer (DCASR–CHI–CF), Defense Contract Administration Services Region, Chicago, O'Hare International Airport, 6400 North Mannheim Road, P.O. Box 66475, Chicago, IL 60666–0475, (312) 694–6535

Accounting & Finance Officer (DCASR–CLE–CA), Defense Contract Administration Services Region, Cleveland, Anthony J. Celebrezze Federal Building, 1240 East Ninth Street, Cleveland, OH 44199–2064, (216) 552–5490

Accounting & Finance Officer (DCASR–DAL–CF), Defense Contract Administration Services Region, Dallas, 1200 Main Street, Dallas, TX 75202–4399, (214) 670–1350

Accounting & Finance Officer (DCASR–LA–CF), Defense Contract Administration Services Region, Los Angeles, 222 N. Sepulveda Boulevard, El Segundo, CA 90245–4320, (213) 335–4002

Accounting & Finance Officer (DCASR–NY–CF), Defense Contract Administration Services Region, New York, 201 Varick Street, New York, NY 10014–4811, (212) 807–3148

Accounting & Finance Officer (DCASR–STL–CF), Defense Contract Administration Services Region, St. Louis, 1136 Washington Avenue, St. Louis, MO 63101–1194, (314) 263–6560

Defense Mapping Agency

1. For employees of the DMA Combat Support Center, the DMA Hydrographic/Topographic Center, the Defense Mapping School, and Headquarters: Associate General Counsel, DMA Hydrographic/Topographic Center, 6500 Brookes Lane, Washington, DC 20315–0030, (202) 227–2268.

2. For employees of the DMA Aerospace Center: Associate General Counsel, DMA Aerospace Center, 3200 South Second Street, St. Louis, MO 63118–3399, (314) 263–4501.

3. For employees of the DMA Reston Center, the DMA Systems Center, and the DMA Telecommunications Services Center: Associate General Counsel, DMA Systems Center, 12100 Sunset Hills Road, Suite 200, Reston, VA 22090–3207, (703) 487–8106.

Defense Nuclear Agency

1. For employees at Kirtland AFB, New Mexico: Commander, Air Force Accounting and Finance Center, Attention: JA, Denver, CO 80279–5000; (303) 370–7524.

2. For all other employees:, General Counsel, Defense Nuclear Agency, Washington, DC 20305; (703) 325–7681.

Uniformed Services University of the Health Sciences

Director, Personnel/Manpower, Civilian Personnel, 4301 Jones Bridge Road, Bethesda, MD 20814–4799; (202) 295–3081.

With respect to other civilian employees of Department of Defense agencies, or other employing activities within the Department of Defense or the Military Departments, the Director of the agency or activity shall assist by receiving and forwarding process to the designated agent in the appropriate disbursing office.

Department of Education

Assistant General Counsel, Division of Business and Administrative Law, Room 4091, FOB–6, 400 Maryland Avenue SW., Washington, DC 20202, (202) 732–2690

Department of Energy

Power Administrations

1. Alaska Power Administration: Administrator, Alaska Power Administration, Department of Energy, P.O. Box 020050, Juneau, AK 99802–0050; (907) 586–7405.
2. Bonneville Power Administration: Chief, Payroll Section DSDP, Bonneville Power Administration, Department of Energy, 905 N.E. 11th Avenue, Portland, OR 97232; (503) 230–3203.
3. Southeastern Power Administration: Chief, Payroll Branch, Department of Energy, MA–33.31, Room E–261, GTN Building, Washington, DC 20545; (301) 353–4012.
4. Southwestern Power Administration: Chief Counsel, Southwestern Power Administration, Department of Energy, P.O. Box Drawer 1619, Tulsa, OK 74101; (918) 581–7426.
5. Western Area Power Administration: General Counsel, Western Area Power

Administration, Department of Energy, P.O. Box 3402, Golden, CO 80401, (303) 231–1529.

Field Offices

1. Albuquerque Operations Office: Chief Counsel, Albuquerque Operations Office, Department of Energy, P.O. Box 5400, Albuquerque, NM 87115, (505) 844–7265.
2. Chicago Operations Office: Chief Counsel, Chicago Operations Office, Department of Energy, 9800 South Cass Avenue, Argonne, IL 60439, (312) 972–2032.
3. Idaho Operations Office: Chief, Field Office Accounting Section, Finance and Budget Division, Department of Energy, 785 DOE Place, Idaho Falls, ID 83402, (208) 526–1822.
4. Nevada Operations Office: Chief, Payroll Branch, MA–33.31, Department of Energy, Room E–261, GTN Building, Washington, DC 20545, (301) 353–4012.
5. Oak Ridge Operations Office: Chief Counsel, Oak Ridge Operations Office, Department of Energy, P.O. Box 2001, Oak Ridge, TN 37831–8510, (615) 576–1200.
6. Richland Operations Office: Chief Counsel, Richland Operations Office, Department of Energy, P.O. Box 550, Richland, WA 99352, (509) 376–7311.
7. San Francisco Operations Office: Chief, Accounting Branch, Financial Management Division, Department of Energy, 1333 Broadway, Oakland, CA 94612, (415) 273–4258.
8. Savannah River Operations Office: Director, Financial Management and Program Support Division, Department of Energy, P.O. Box A, Aiken, SC 29802, (803) 725–5590.
9. Washington DC Headquarters, Pittsburgh Naval Reactors Office, Schenectady Naval Reactors Office, and all other organizations within the Department of Energy: Chief, Payroll Branch, MA–33.31, Department of Energy, Room E–261, GTN Building, Washington, DC 20545, (301) 353–4012.

Department of Health and Human Services

1. For the garnishment of the remuneration of employees of the Department of Health and Human Services: Garnishment Agent, Office of General Counsel, Room 5362—North Building, 330 Independence Ave. SW., Washington, DC 20201, (202) 475–0178.

2. For the garnishment of benefits under Title II of the Social Security Act, legal process may be served on the office manager at any Social Security District or Branch Office. The addresses and telephone numbers of Social Security District and Branch Offices may be found in the local telephone directory.

Department of Housing and Urban Development

Chief, Systems Support Branch, Evaluation and Systems Division, Department of Housing and Urban Development, 451 7th Street SW., Room 2102, Washington, DC 20410–3100, (202) 755–6116.

Department of the Interior

Secretarial Offices, Office of Territorial Affairs; Advisory Council on Historic Preservation; Commission of Fine Arts; Delaware River Basin Commission; and Susquehanna River Basin Commission:

Chief, Division of Fiscal Services, Department of the Interior, 18th & C Streets NW., Room 5257, Washington, DC 20240, (202) 343–5027.

Bureau of Mines

Chief, Division of Finance, Bureau of Mines, Department of the Interior, Denver Federal Center, Bldg. 20, Room D–2243, Denver, CO 80225, (303) 236–0355.

Fish and Wildlife Service

Chief, Division of Finance, Fish and Wildlife Service, Department of the Interior, 18th & C Streets NW., Washington, DC 20240, (202) 343–8991.

Geological Survey

Chief, Office of Financial Management (MS 270), Geological Survey, Department of the Interior, 12201 Sunrise Valley Drive, Reston, VA 22092, (703) 648–7604.

National Park Service

a. For employees of the National Capital Region: Associate Regional Director, Administration, National Capital Region, National Park Service, 1100 Ohio Drive SW., Washington, DC 20242, (202) 485–9826.
b. For employees of the North Atlantic Region: Associate Regional Director, Administration, North Atlantic Region, National Park Service, 15 State Street, Boston, MA 02109, (617) 835–8833.
c. For employees of the Mid-Atlantic Region: Associate Regional Director, Administration, Mid-Atlantic Region, National Park Service, 143 South Third Street, Philadelphia, PA 19106, (215) 597–4818.
d. For employees of the Southeast Region: Associate Regional Director, Administration, Southeast Region, National Park Service, 75 Spring Street SW., Atlanta, GA 30303, (404) 864–3495.
e. For employees of the Midwest Region: Associate Regional Director, Administration, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, NE 68102, (402) 864–3495.
f. For employees of the Southwest Region: Associate Regional Director, Administration, Southwest Region, National Park Service, Old Santa Fe Trail, P.O. Box 728, Santa Fe, NM 87501, (505) 476–6386.
g. For employees of the Rocky Mountain Region: Associate Regional Director, Administration, Rocky Mountain Region, National Park Service, 655 Parfet Street, P.O. Box 25287, Denver, CO 80215, (303) 327–2700.
h. For employees of the Western Region: Associate Regional Director, Administration, Western Region, National Park Service, 450 Golden Gate Avenue, P.O. Box 36036, San Francisco, CA 94102, (415) 556–4540.
i. For employees of the Pacific Northwest Region: Associate Regional Director, Administration, Pacific Northwest Region, National Park Service, 601 Fourth and Pike Building, Seattle, WA 98101, (206) 399–4658.
j. For employees of the Alaska Region: Associate Regional Director, Administration, Alaska Region, National Park Service, 2525 Gambell Street, Room 107, Anchorage, AK 99503, (907) 271–2695.
k. For all other employees of the National Park Service or where the garnishor is not certain as to which region the legal process should be sent: Chief Personnel Officer, National Park Service, Department of the Interior, P.O. Box 37127, Washington, DC 20013–7127, (202) 343–8093.

Bureau of Reclamation

Deputy Assistant Commissioner—Administration, Bureau of Reclamation, Department of the Interior, P.O. Box 25007, Denver Federal Center, Denver, CO 80225, (303) 776–0007.

Bureau of Indian Affairs

Chief, Branch of Payroll Liaison, Bureau of Indian Affairs, Department of the Interior, 500 Gold Avenue SW., Albuquerque, NM 87103, (505) 766–2936.

Office of Surface Mining Reclamation and Enforcement

Chief, Division of Financial Management, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, P.O. Box 25065, Denver, CO 80225, (303) 236–0331.

Bureau of Land Management

Chief, Division of Finance, Bureau of Land Management, Department of the Interior, 18th & C Streets NW., Room 3070, Washington, DC 20240, (202) 343–6743.

Department of Justice

1. For all employees, except employees of the Federal Bureau of Investigation: Assistant Director, Employee Data Service, Systems Operations Staff, Justice Management Division, Department of Justice, P.O. Box 2922, Washington, DC 20013, (202) 633–4442.

2. For employees of the Federal Bureau of Investigation: Personnel Officer, FBI Headquarters, Department of Justice, J. Edgar Hoover Building, Room 6052, Washington, DC 20535, (202) 324–4981.

Department of Labor

1. Payments to employees of the Department of Labor: Director, Office of Accounting, Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523–8314.

2. Process relating to those exceptional cases where there is money due and payable by the United States under the Longshoremen's Act should be directed to the: Associate Director for Longshore and Harbor Workers' Compensation, Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523–8721.

3. Process relating to benefits payable under the Federal Employees' Compensation Act should be directed to the appropriate district office of the Office of Workers' Compensation Programs:

District No. 1

Deputy Commissioner, Office of Workers' Compensation Programs, Room 1800, John F. Kennedy Building, Government Center, Boston, MA 12203, (617) 565–2137

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont

District No. 2

Deputy Commissioner, Office of Workers' Compensation Programs, 201 Varick Street, P.O. Box 566, New York, NY 10014–0566, (212) 337–2075

New Jersey, New York, Puerto Rico, and the Virgin Islands

District No. 3

Deputy Commissioner, Office of Workers' Compensation Programs, Gateway Building, 3535 Market Street, Philadelphia, PA 19104, (215) 596–1457

Delaware, Pennsylvania, and West Virginia

District No. 6

Assistant Deputy Commissioner, Office of Workers' Compensation Programs, 311 West Monroe Street, Jacksonville, FL 32202, (904) 791–2821

Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee

District No. 7

Assistant Deputy Commissioner, Office of Workers' Compensation Programs, Hale Boggs Federal Building, 500 Camp Street, P.O. Box 30628, New Orleans, LA 70190, (504) 589–6135

Arkansas and Louisiana

District No. 9

Assistant Deputy Commissioner, Office of Workers' Compensation Programs, 1240 East 9th Street, Cleveland, OH 44199, (216) 522–3803

Indiana, Minnesota, and Ohio

District No. 10

Deputy Commissioner, Office of Workers' Compensation Programs, 230 S. Dearborn Street, 8th Floor, Chicago, IL 60604, (312) 353–5656

Illinois, Minnesota, and Wisconsin

District No. 11

Deputy Commissioner, Office of Workers' Compensation Programs, 1910 Federal Office Building, 911 Walnut Street, Kansas City, MO 64106, (816) 374–2195

Iowa, Kansas, Missouri, and Nebraska

District No. 12

Deputy Commissioner, Office of Workers' Compensation Programs, Drawer 3558, Federal Building, 1961 Stout Street, Denver, CO 80294, (303) 844–5407

Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming

District No. 13

Deputy Commissioner, Office of Workers' Compensation Programs, 71 Stevenson Street, 2nd Floor, P.O. Box 3769, San Francisco, CA 94119–3769, (415) 995–5699

Arizona, California, and Nevada

District No. 14

Deputy Commissioner, Officer of Workers' Compensation Programs, 4010 Federal Office Building, 909 First Avenue, Seattle, WA 98174, (206) 442–5508

Alaska, Idaho, Oregon, and Washington

District No. 15

Assistant Deputy Commissioner, Office of Workers' Compensation Programs, 300 Ala Moana Boulevard, Box 50209, Honolulu, HI 96850, (808) 546–8336

All land and water areas west of the continents of North and South America to 60 degrees east longitude (excluding Iran)

District No. 16

Deputy Commissioner, Office of Workers' Compensation Programs, 555 Griffin Square Building, Griffin and Young Streets, Dallas, TX 75202, (214) 767–4707

Arkansas, Louisiana, New Mexico, Oklahoma, and Texas

District No. 25

Assistant Deputy Commissioner, Office of Workers' Compensation Programs, 1100 L Street, NW., Washington, DC 20211, (202) 724–0713

District of Columbia, Maryland, and Virginia

4. Process relating to claims arising out of the places set forth below and process seeking to attach Federal Employees' Compensation Act benefits payable to employees of the Department of Labor should be directed to the: Associate Director for Federal Employees' Compensation, Room S3229, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523–7552.

Canada, Mexico, Central and South America, and all land and water areas east of the continents of North and South America to 60 degrees east longitude (including Iran but excluding Puerto Rico and the Virgin Islands)

Department of State

Executive Director (L/EX), Office of the Legal Adviser, Department of State, Room 5519A, 22nd and C Streets NW., Washington, DC 20520, (202) 647–8323

Department of Transportation

Office of the Secretary

General Counsel, 400 7th Street SW., Washington, DC 20590, (202) 366–4702

United States Coast Guard

Commanding Officer (L), U.S. Coast Guard Pay and Personnel Center, Federal Building, 444 SE. Quincy Street, Topeka, KS 66683–3591, (913) 295–2520

Federal Aviation Administration

1. Headquarters (Washington, DC) and overseas employees: Chief Counsel, 800 Independence Avenue SW., Washington, DC 20591, (202) 267–3362.

2. Central Region (Nebraska, Kansas, Iowa, Missouri, Minnesota, Wisconsin, Michigan, Illinios, Indiana, Ohio, North Dakota, and South Dakota): Regional Counsel, ACE–7, 601 E. 12th Street, Kansas City, Missouri 64106, (816) 374–5446.

3. Southern Region (Kentucky, North Carolina, Tennessee, Mississippi, Alabama, Georgia, South Carolina, Florida, Puerto Rico, Republic of Panama, the Virgin Islands, Arkansas, Louisiana, Oklahoma, Texas, New Mexico): FAA Technical Center (Atlantic City, New Jersey); and Metropolitan Washington Airports: Regional Counsel, ASO–7, P.O. Box 20636, Atlanta, Georgia 30320, (404) 763–7204.

4. Mike Monroney Aeronautical Center; Alaskan Region (Alaska); Eastern Region (New York, Pennsylvania, New Jersey, West Virginia, Maryland, Delaware, and Virginia); New England Region (Maine, New Hampshire, Vermont, Massachusetts, Connecticut, and Rhode Island); Northwest Mountain Region (Washington, Oregon, Montana, Utah, Colorado, Idaho, and Wyoming); and Western Pacific Region (Arizona, California, Hawaii, Nevada, Pacific-Asia Area, including Guam, American Somoa, Northern Mariana Islands, and Japan):

Aeronautical Center Counsel, AAC–7, P.O. Box 25082, Oklahoma City, Oklahoma 73103, (405) 686–2296

Federal Highway Administration

Chief Counsel, 400 7th Street SW., Washington, DC 20590, (202) 366–0740

Federal Railroad Administration

Chief Counsel, 400 7th Street SW., Washington, DC 20590, (202) 366–0767

Maritime Administration

Chief Counsel, Room 7232, 400 7th Street SW., Washington, DC 20590, (202) 366–5711

National Highway Traffic Safety Administration

Chief Counsel, 400 7th Street SW., Washington, DC 20590, (202) 366–9511

Urban Mass Transportation Administration

Chief Counsel, 400 7th Street SW., Washington, DC 20590, (202) 366–4063

St. Lawrence Seaway Development Corporation

General Counsel, P.O. Box 520, Massena, New York 13662, (315) 764–3200

Research and Special Programs Administration

Chief Counsel, 400 7th Street SW., Washington, DC 20590, (202) 366–4400

Department of the Treasury

Office of the Secretary

General Counsel, Department of the Treasury, Room 3000, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, DC 20220, (202) 566–2093

Office of Foreign Assets Control

Chief Counsel, Room 401, 1331 G Street NW., Washington, DC 20220, (202) 376–0236

U.S. Savings Bonds Division

Assistant General Counsel (AL), Room 1410, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, DC 20220, (202) 566–8464

Financial Management Service

Chief Counsel, 401 14th Street SW., Washington, DC 20227, (202) 287–0673

Internal Revenue Service

Assistant Chief Counsel, General Legal Services, 901 D Street SW., P.O. Box 69, Washington, DC 20024, (202) 252–8000

Bureau of Alcohol, Tobacco & Firearms

Chief Counsel, Room 5526, Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226, (202) 566–7772

Bureau of the Public Debt

Chief Counsel, Room 503, 999 E Street NW., Washington, DC 20239, (202) 376–4320

Secret Service

Legal Counsel, Room 842, 1800 G Street NW., Washington, DC 20223, (202) 535–5771

Bureau of Engraving & Printing

Legal Counsel, Room 109 M, 14th & C Streets SW., Washington, DC 20228, (202) 447–1425

Office of the Comptroller of the Currency

Director, Litigation, Office of Chief Counsel, Fifth Floor, 490 L'Enfant Plaza East SW., Washington, DC 20219, (202) 447–1893

United States Mint

Chief Counsel, 401 14th Street SW., Washington, DC 20227, (202) 376–0564

Federal Law Enforcement Training Center

Legal Counsel, Building 94, Glynco, GA 31520, (912) 267–2441

Customs Service

(a) Headquarters (Washington, DC) and overseas employees: Assistant Chief Counsel of Customs (Hearing and Claims), 1301 Constitution Ave. NW., Washington, DC 20229, (202) 566–2482

(b) For employees not located at headquarters or overseas, service of process may be made upon the Regional Counsel of Customs in whose region the obligor is employed, as listed below:

Region I, Regional Counsel of Customs, Suite 1739, 100 Summer Street, Boston, MA 02110, (617) 223–0075

Region II, Regional Counsel of Customs, Room 732, 6 World Trade Center, New York, NY 10048, (212) 466–4562

Region III, Regional Counsel of Customs, 40 S. Gay Street, Baltimore, MD 21202, (301) 962–4119

Region IV, Regional Counsel of Customs, 99 SE. 5th Street, Miami, FL 33131, (305) 350–4321

Region V, Regional Counsel of Customs, Suite 2422, 1440 Canal Street, New Orleans, LA 70112, (504) 589–6981

Region VI, Regional Counsel of Customs, Suite 1220, 500 Dallas Avenue, Houston, TX 77002, (713) 226–4887

Region VII, Regional Counsel of Customs, 300 N. Los Angeles Street, Los Angeles, CA 90053, (213) 688–5936

Region VIII, Regional Counsel of Customs, Suite 1000, 211 Main Street, San Francisco, CA 94105, (415) 556–3873

Regional IX, Regional Counsel of Customs, Suite 1417, 55 E. Monroe Street, Chicago, IL 60603, (312) 533–7860

Department of Veterans Affairs (VA)

Alabama

Fiscal Officer, Birmingham Medical Center, Sent to: Fiscal Officer, VA Medical Center, 215 Perry Hill Road, Montgomery, AL 36193 (205) 272–4670 ext. 4709

National Cemetery Area Office, 700 South 19th Street, Birmingham, AL 35233: (205) 939–2103

Mobile Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Gulfport, MS 39501: (601) 863–1972, ext. 225

Fiscal Officer, Montgomery Regional Office, 474 South Court Street, Montgomery, AL 36103: (205) 272–4670, ext. 204

Fiscal Officer Montgomery Medical Center, 215 Perry Hill Road, Montgomery, AL 36103, (205) 272–4670, ext. 204

Fiscal Officer, Tuscaloosa Medical Center, Tuscaloosa, AL 35401: (205) 553–3760

Fiscal Officer, Tuskegee Medical Center, Tuskegee, AL 36083: (205) 727–0550, ext. 0622

Alaska

Fiscal Officer, Anchorage Regional Office, Outpatient Clinic, Old Federal Bldg. and Post Office, 605 West 4th Avenue, Anchorage, AK 99501: (907) 271–4562

Juneau VA Office, Send to: Fiscal Officer, VA Regional Office, Old Federal Bldg. and Post Office, 235 E. 4th Avenue, Anchorage, AK 99501: (907) 271–2250

Sitka National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 4432 Beacon Avenue, South, Seattle, WA 98108: (206) 762–1016 ext. 286

Arizona

Cave Creek National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Seventh Street and Indian School Road, Phoenix, AZ 85012

Fiscal Officer, Phoenix Regional Office, 3225 North Central Avenue, Phoenix, AZ 85012, (606) 241–2735

Fiscal Officer, Phoenix Medical Center, Seventh Street & Indian School Road, Phoenix, AZ 85012; (602) 277–5551

Fiscal Officer, Prescott Medical Center, Prescott, AZ 86313; (602) 445–4860 ext. 264

Prescott National Cemetery Area Office, Send to: Fiscal Officer, VA Center, Prescott, AZ 86313, (602) 445–4860 ext. 264

Fiscal Officer, Tucson Medical Center, Tucson, AZ 85723, (602) 792–1450 ext. 710

Arkansas

Fayetteville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Fayetteville, AR 72701, (501) 443–4301

Fiscal Officer, Fayetteville Medical Center, Fayetteville, AR 72701, (501) 443–4301

Fort Smith National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Fayetteville, AR 72701, (501) 443–4301

Fiscal Officer, Little Rock Regional Office, 1200 West 3d Street, Little Rock, AR 72201, (501) 378–5142

Fiscal Officer, John L. McClellan Memorial Veterans Hospital, 4300 West 7th Street (04), Little Rock, AR 72205–5484, (501) 661–1202 ext. 1310

California

Send to: Fiscal Officer, Bell Supply Depot, VA Supply Depot, P.O. Box 27, Hines, IL 60141, (312) 681–6800

Fiscal Officer, Fresno Medical Center, 2615 East Clinton Avenue, Fresno, CA 94703, (209) 225–6100

Fiscal Officer, Livermore Medical Center, Livermore, CA 94550, (415) 447–2560 ext. 317

Fiscal Officer, Loma Linda Medical Center, 11201 Benton Street, Loma Linda, CA 92357, (714) 825–7084 ext. 2550/2551

Fiscal Officer, Long Beach Medical Center, 5901 East Seventh Street, Long Beach, CA 90822, (213) 498–1313 ext. 2101

Fiscal Officer, Los Angeles Regional Office, Federal Bldg., 1100 Wilshire Blvd., Los Angeles, CA 90024, (213) 209–7565

Jurisdiction over the following counties in California: Inyo, Kern, Los Angeles, Orange, San Bernardino, San Luis Obispo, Santa Barbara and Ventura.

Los Angeles Data Processing Center, Send to: Fiscal Officer, VA Regional Office, Federal Bldg., 1100 Wilshire Blvd., Los Angeles, CA 90024, (213) 209–7565

Fiscal Officer, Los Angeles Medical Center, Brentwood Division, Los Angeles, CA 90073, (213) 478–3478

Fiscal Officer, Los Angeles Medical Center, Wadsworth Division, Los Angeles, CA 90073, (213) 478–3478

Fiscal Officer, Los Angeles Outpatient Clinic, 425 South Hill Street, Los Angeles, CA 90013, (213) 894–3870

Los Angeles Regional Office of Audit, Send to: Fiscal Officer, VA Medical Center, Brentwood Division, Los Angeles, CA 90073, (213) 824–4402

Los Angeles Field Office of Audit, Send to: Federal Officer, VA Medical Center, Wadsworth Division, Los Angeles, CA 90073, (213) 478–3478

Los Angeles National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Brentwood Division, Los Angeles, CA 90073, (213) 478–3478

Fiscal Officer, Martinez Medical Center, 150 Muir Rd., Martinez, CA 94553, (415) 228–6680 ext. 235

Fiscal Officer, Palo Alto Medical Center, 3801 Miranda Avenue, Palo Alto, CA 94304, (415) 493–5000 ext. 5643

Riverside National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Los Angeles, CA 90073, (213) 478–3478

San Bruno National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 4150 Clement Street, San Bruno, CA 94121, (415) 221–4810 ext. 315/316

Fiscal Officer, San Diego Medical Center, 3350 La Jolla Village Drive, San Diego, CA 92161, (714) 453–7500 ext. 3351

San Diego Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 3350 La Jolla Village Drive, San Diego, CA 92161, (714) 453–7500 ext. 3351

Fiscal Officer, San Diego Regional Office, 2022 Camino Del Rio North, San Diego, CA 92108, (714) 289–5703

Jurisdiction over the following counties in California: Imperial, Riverside and San Diego.

San Francisco National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Officer, 4150 Clement Street, San Francisco, CA 94121, (415) 556–0483
Fiscal Officer, San Francisco Regional Office, 211 Main Street, San Francisco, CA 94105, (415) 974–0160
Jurisdiction over all counties in California except Inyo, Kern, Los Angeles, Orange, San Bernardino, San Luis Obispo, Santa Barbara, Ventura, Imperial, Riverside, San Diego, Alpine, Lassen, Modoc and Mono.
Fiscal Officer, San Francisco Medical Center, 4150 Clement Street, San Francisco, CA 94121, (415) 221–4810 ext. 315/316
Fiscal Officer, Sepulveda Medical Center, 16111 Plummer Street, Sepulveda, CA 91343, (818) 891–2377

Colorado

Fiscal Officer, Denver Regional Office, Denver Federal Center, Bldg. 20, Denver, CO 80225, (303) 234–3920
Fiscal Officer, Denver Medical Center, 1055 Clermont Street, Denver, CO 80220, (303) 393–2813
Denver National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1055 Clermont Street, Denver, CO 80220, (303) 393–2813
Fort Logan National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1055 Clermont Street, Denver, CO 80220, (303) 393–2813
Fort Lyon National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Fort Lyon, CO 81038 (719) 384–3987
Fiscal Officer, Fort Lyon Medical Center, Fort Lyon, CO 81038, (719) 384–3987
Fiscal Officer, Grand Junction Medical Center, 2121 North Avenue, Grand Junction, CO 81501, (303) 242–0731

Connecticut

Fiscal Officer, Hartford Regional Office, 450 Main Street, Hartford, CT 06103, (203) 244–3217
Fiscal Officer, Newington Medical Center, 555 Willard Avenue, Newington, CT 06111, (203) 666–6951 ext. 369
Fiscal Officer, West Haven Medical Center, 950 Campbell Avenue, West Haven, CT 06516, (203) 932–5711 ext. 859

Delaware

Fiscal Officer, Wilmington Medical and Regional Office Center, 1601 Kirkwood Highway, Wilmington, DE 19805, (302) 633–5432

District of Columbia

Finance Division Chief (047H), Washington Central Office Room C–50, 810 Vermont Avenue NW., Washington, DC 20420, (202) 389–3901
Washington Veterans Canteen Service Field Office, Send to: Finance Division Chief (047H), VA Central Office Room C–50, 810 Vermont Avenue NW., Washington, DC 20420, (202) 389–3901
Fiscal Officer, Washington Regional Office, 941 North Capitol Street NE., Washington, DC 20421, (202) 275–1349
Jurisdiction over all foreign countries or overseas areas except Mexico, American Samoa, Guam, Midway, Wake, the Trust Territory of the Pacific Islands, the Virgin Islands and the Philippines. Also, jurisdiction over Prince George's and Montgomery Counties in Maryland; Fairfax and Arlington Counties and the cities of Alexandria, Fairfax and Falls Church in Virginia.
Fiscal Officer, Washington Medical Center, 50 Irving Street NW., Washington, DC 20422, (202) 745–8229

Florida

Fiscal Officer, Bay Pines Medical Center, National Cemetery Area Office, Bay Pines, FL 33504, (813) 398–9321
Fiscal Officer, Gainesville Medical Center, Archer Road, Gainesville, FL 32601, (904) 376–1611 ext. 6685
Jacksonville Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 1601 S.W. Archer Road, Gainesville, FL 32602, (904) 376–1611 ext. 6685
Jacksonville VA Office, Send to: Fiscal Officer, VA Regional Office, 144 First Avenue, South, South St. Petersburg, FL 33731, (813) 893–3236
Fiscal Officer, Lake City Medical Center, 801 South Manor Street, Lake City, FL 32055, (904) 755–3016
Miami VA Office, Send to: Fiscal Officer VA Regional Office, 144 First Avenue, South, St. Petersburg, FL 33731, (813) 893–3236
Fiscal Officer, Miami Medical Center, 1201 Northwest 16th Street, Miami, FL 33125, (305) 324–4284
Orlando Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 1300 North 30th Street, Tampa, FL 33612, (813) 971–4500
Fiscal Officer, James A. Haley Veterans' Hospital, 13000 Bruce B. Downs Blvd., Tampa, Florida 33612, (813) 972–7501
Riviera Beach Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 1201 Northwest 16th Street, Miami, FL 33125, (305) 324–4284
Pensacola National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Gulfport, MS 39501, (601) 863–1972 ext. 225
St. Augustine National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Archer Road, Gainesville, FL 32602, (904) 376–1611 ext. 6685
Fiscal Officer, St. Petersburg Regional Office, 144 First Avenue South, St. Petersburg, FL 33612, (813) 893–3236

Georgia

Fiscal Officer, Atlanta Regional Office, 730 Peachtree Street NE., Atlanta, GA 30365, (404) 347–5008
Atlanta Veterans Canteen Service Field Office, Send to: Fiscal Officer, VA Medical Center, 1670 Clairmont Road, Decatur, GA 30033, (404) 321–6111
Atlanta National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Office, 1670 Clairmont Road, Decatur, GA 30033, (404) 321–6111
Atlanta Field Office of Audit, Send to: Fiscal Officer, VA Regional Office, 730 Peachtree Street NE., Atlanta, GA 30301, (404) 347–5008
Fiscal Officer, Augusta Medical Center, Augusta, GA 30904, (404) 733–4471 ext. 675/676
Fiscal Officer, VA Medical Center, 2460 Wrightsboro Road, Augusta, GA 30910, (404) 724–5116
Fiscal Officer, Decatur Medical Center, 1670 Clairmont Road, Decatur, GA 30033, (404) 321–6111 ext. 6320
Fiscal Officer, Dublin Medical Center, Dublin, GA 31021, (912) 272–1210 ext. 373
Marietta National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1670 Clairmont Road, Decatur, GA 30033, (404) 321–6111

Hawaii

Fiscal Officer, Honolulu Regional Office, P.O. Box 50188, Honolulu, HI 96850, (808) 541–1490
Jurisdiction over Islands of American Samoa, Guam, Wake, Midway and Trust Territory of the Pacific Islands
Honolulu National Cemetery Area Office, Send to: Fiscal Officer, VA Regional Office, P.O. Box 50188, Honolulu, HI 96850, (808) 546–2109

Idaho

Fiscal Officer, Boise Medical Center, 500 West Fort Street, Boise, ID 83702, (208) 336–5100 ext. 7312
Fiscal Officer, Boise Regional Office, Federal Bldg. & U.S. Courthouse, 550 West Fort Street, Box 044, Boise, ID 83724, (208) 334–1009

Illinois

Alton National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, St. Louis, MO 63125, (314) 894–4631
AMF O'Hare Field Office of Audit, Send to: Fiscal Officer, VA Medical Center, Hines, IL 60141, (312) 343–7200 ext. 2481
Fiscal Officer, Chicago Medical Center (Lakeside), 33 East Huron Street, Chicago, IL 60611, (312) 943–6600
Fiscal Officer, Chicago Medical Center (West Side), 820 South Damen Avenue, Chicago, IL 60612, (312) 666–6500 ext. 3338
Fiscal Officer, Chicago Regional Office, 536 South Clark Street, Chicago, IL 60680, (312) 886–9417
Fiscal Officer, Danville Medical Center, Danville, IL 61832, (217) 442–8000
Danville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1900 E. Street, Danville, IL 61832, (217) 442–8000 ext. 210
Fiscal Officer, Hines Medical Center, Hines, IL 60141, (312) 343–7200 ext. 2481
Hines Marketing Center, Send to: Fiscal Officer, VA Supply Depot, P.O. Box 27, Hines, IL 60141, (312) 681–6800
Fiscal Officer, Hines Supply Depot, P.O. Box 27, Hines, IL 60141, (312) 681–6800
Fiscal Officer, Hines Data Processing Center, P.O. Box 66303, AMF O'Hare, Hines, IL 60666, (312) 681–6650
Fiscal Officer, Marion Medical Center, Marion, IL 62959, (618) 997–5311
Mound City National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 2401 West Main Street, Marion, IL 62959, (618) 997–5311
Fiscal Officer, North Chicago Medical Center, North Chicago, IL 60064

Quincy National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Iowa City, IA 52240, (319) 338–0581 ext. 304
Rock Island National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Iowa City, IA 52240, (319) 338–0581 ext. 304
Springfield National Cemetery Area Officer, Send to: Fiscal Officer, VA Medical Center, Danville, IL 61832, (217) 442–8000

Indiana

Evansville, Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Marion, IL 62959, (618) 997–5311
Fiscal Officer, Fort Wayne Medical Center, 1600 Randalia Drive, Fort Wayne, IN 46805, (219) 426–5431
Fiscal Officer, Indianapolis Regional Office, 575 North Pennsylvania Street, Indianapolis, IN 46204, (317) 269–7840
Fiscal Officer, Indianapolis Medical Center, 1481 West 10th Street, Indianapolis, IN 46202, (317) 635–7401 ext. 2363
Indianapolis National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1481 West 10th Street, Indianapolis, IN 46202, (317) 635–7401 ext. 2363
Fiscal Officer, Marion Medical Center, Marion, IN 46952, (317) 674–3321 ext. 211
Marion National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Marion, IN 46952, (317) 674–3321 ext. 211
New Albany National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 800 Zorn Avenue, Louisville, KY 40202, (502) 895–3401

Iowa

Fiscal Officer, Des Moines Regional Office, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4220
Fiscal Officer, Des Moines Medical Center, 30th & Euclid Avenue, Des Moines, IA 50310, (515) 255–2173
Fiscal Officer, Iowa City Medical Center, Iowa City, IA 52246, (319) 338–0581 ext. 7702
Keokuk National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Iowa City, IA 52240, (319) 338–0581 ext. 304

Kansas

Ft. Leavenworth National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Leavenworth, KS 66048, (913) 682–2000 ext. 214.
Ft. Scott National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Leavenworth, KS 66048, (913) 682–2000 ext. 214
Leavenworth National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Leavenworth, KS 66048, (913) 682–2000 ext. 214
Fiscal Officer, Leavenworth Medical Center, Leavenworth, KS 66048, (913) 682–2000 ext. 214
Fiscal Officer, Topeka Medical Center, 2200 Gage Blvd., Topeka, KS 66622, (913) 272–3111 ext. 521
Fiscal Officer, Wichita Medical Center, 5500 East Kellogg, Wichita, KS 67211, (316) 685–2221 ext. 256
Wichita Regional Office, Send to: VA Medical Center, 5500 East Kellogg, Wichita, KS 67211, (316) 685–2111 ext. 256
Process for VA service-connected benefits should also be sent to the Wichita Medical Center rather than to the Wichita Regional Office.
Fiscal Officer, VA Regional Office, 901 George Washington Blvd., Wichita, KS 67211, (316) 269–6813

Kentucky

Danville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40507, (606) 223–4511
Fiscal Officer, Knoxville Medical Center, Knoxville, KY 50138, (515) 842–3101 ext. 241
Lebanon National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40507, (606) 233–4511
Lexington National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40507, (606) 233–4511
Fiscal Officer, Lexington Medical Center, Lexington, KY 40507, (606) 233–4511
Fiscal Officer, Louisville Regional Office, 600 Federal Place, Louisville, KY 40202, (502) 582–6482
Fiscal Officer, Louisville Medical Center, 800 Zorn Avenue, Louisville, KY 40202, (502) 895–3401 ext. 241
Louisville National Cemetery Area Office (Zachary Taylor), Send to: Fiscal Officer, VA Medical Center, 800 Zorn Avenue, Louisville, KY 40202, (502) 895–3401 ext. 241
Louisville National Cemetery Area Office (Cave Hill), Send to: Fiscal Officer, VA Medical Center, 800 Zorn Avenue, Louisville, KY 40202, (502) 895–3401 ext. 241
Nancy National Cemetery Area Office, Send to: Fiscal Office, VA Medical Center, Lexington, KY 40507, (606) 233–4511
Nicholasville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40507, (606) 233–4511
Perryville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40507, (606) 233–4511

Louisiana

Fiscal Officer, Alexandria Medical Center, Alexandria, LA 71303, (318) 473–0010 ext. 2281
Baton Rouge National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1601 Perdido Street, New Orleans, LA 70146, (504) 568–0811
Fiscal Officer, New Orleans Regional Office, 701 Loyola Avenue, New Orleans, LA 70133, (504) 589–6604
Fiscal Officer, New Orleans Medical Center, 1601 Perdido Street, New Orleans, LA 70146, (504) 568–0811
Baton Rouge National Cemetery, 220 North 19th Street, Baton Rouge, LA 70806, (504) 389–0788
Pineville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Alexandria, LA 71301, (318) 442–0251
Fiscal Officer, Shreveport Medical Center, 510 East Stoner Avenue, Shreveport, LA 71101, (318) 221–8411 ext. 722
Shreveport VA Office, Send to: Fiscal Officer, VA Regional Officer, 701 Loyola Avenue, New Orleans, LA 70113, (504) 589–6604
Port Hudson (Zachary) National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1601 Perdido Street, New Orleans LA 70146, (504) 568–0811

Maine

Portland VA Office, Send to: Fiscal Officer, VA Center, Togus, ME 04330, (207) 623–8411
Fiscal Officer, Togus Medical & Regional Office Center, Togus, ME 04330, (207) 623–8411
Togus National Cemetery Area Office, Send to: Fiscal Officer, VA Center, Togus, ME 04330, (207) 623–8411

Maryland

Annapolis National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 3900 Loch Raven Blvd., Baltimore, MD 21218, (301) 467–9932 ext. 5281/5282
Fiscal Officer, Baltimore Regional Office, Federal Bldg., 31 Hopkins Plaza, Baltimore, MD 21201, (301) 962–4410
Jurisdiction does not include Prince Georges and Montgomery Counties which are included under the Washington, D.C. Regional Office
Baltimore Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 3900 Loch Raven Blvd., Baltimore, MD 21218, (301) 467–9932 ext. 5281/5282
Fiscal Officer, Baltimore Medical Center, 3900 Loch Raven Blvd., Baltimore, MD 21218, (301) 467–9932 ext. 5281/5282
Baltimore National Cemetery Area Office (Loudon Park), Send to: Fiscal Officer, VA Medical Center, 3900 Loch Raven Blvd., Baltimore, MD 21218, (301) 467–9932 ext. 5281/5282
Fiscal Officer, Fort Howard Medical Center, Fort Howard, MD 21052, (301) 687–6768 ext. 328
Hyattsville Field Office of Audit, Send to: Fiscal Division Chief C047H), VA Central Office, Room C–50, 810 Vermont Avenue, Washington, DC 20420, (202) 389–3901
Fiscal Officer, Perry Point Medical Center, Perry Point, MD 21902, (301) 642–2411 ext. 5224/5225

Massachusetts

Fiscal Officer, Bedford Medical Center, 200 Springs Road, Bedford, MA 01730, (617) 275–7500
Fiscal Officer, Boston Regional Office, John F. Kennedy Bldg. Room 400C, Government Center, Boston, MA, (617) 565–2616
Jurisdiction over certain towns in Bristol and Plymouth Countries and the counties of Barnstable, Dukes and Nantucket is allocated to the Providence, Rhode Island Regional Office.
Boston Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 150 South Huntington Avenue, Boston, MA 02130, (617) 232–9500 ext. 427/420
Fiscal Officer, Boston Medical Center, 150 South Huntington Avenue, Boston, MA 02130, (617) 232–9500 ext. 427/420
Bourne National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Brockton, MA 02401, (617) 583–4500 ext. 266
Fiscal Officer, Brockton Medical Center, Brockton, MA 02401, (617) 583–4500 ext. 266
Lowell Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 150 South Huntington Avenue, Boston, MA 02130, (617) 322–9500 ext. 427/420

New Bedford Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Providence, RI 02908, (401) 273–7100
Fiscal Officer, Northampton Medical Center, Northampton, MA 01060, (413) 584–4040
Springfield Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Northampton, MA 01060, (413) 584–4040
Springfield VA Office, Send to: Fiscal Officer, VA Regional Office, John F. Kennedy Bldg. Rm 400C, Government Center, Boston, MA 02203, (617) 565–2616
Fiscal Officer, West Roxbury Medical Center, 1400 Veterans of Foreign Wars Parkway, West Roxbury, MA 02132, (617) 323–7700 ext. 5650
Worcester Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 1400 Veterans of Foreign Wars Parkway, West Roxbury, MA 02132, (617) 322–7700 ext. 5650

Michigan

Fiscal Officer, Allen Park Medical Center, Allen Park, MI 48101, (313) 562–6000 ext. 535
Fiscal Officer, Ann Arbor Medical Center, 2215 Fuller Road, Ann Arbor, MI 48105, (313) 769–7100 ext. 288/289
Fiscal Officer, Battle Creek Medical Center, Battle Creek, MI 49016, (616) 966–5600 ext. 3566
Grand Rapids Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Battle Creek, MI 49016, (616) 966–5600 ext. 3566
Fiscal Officer, Detroit Regional Office, 477 Michigan Avenue, Detroit, MI 48226, (313) 226–4190
Fiscal Officer, Iron Mountain Medical Center, Iron Mountain, MI 49801, (906) 774–3300 ext. 308
Fiscal Officer, Saginaw Medical Center, 1500 Weiss Street, Saginaw, MI 48602, (517) 793–2340 ext. 3061

Minnesota

Fiscal Officer, Minneapolis Medical Center, 54th & 48th Avenue, South, Minneapolis, MN 55417, (612) 725–6767 ext. 6311
Fiscal Officer, St. Cloud Medical Center, St. Cloud, MN 56301, (612) 252–1600 ext. 411
Fiscal Officer, St. Paul Center (Regional Office), Federal Bldg., Ft. Snelling, St. Paul, MN 55111, (612) 725–4075
Fiscal Officer, VA Medical Center, One Veterans Drive, Minneapolis, MN 55417 (612) 725–2150
Jurisdiction over the counties of Becker, Beltrami, Clay, Clearwater, Kittson, Lake of the Woods, Mahnomen, Marshall, Norman, Otter Tail, Pennington, Polk, Red Lake, Roseau and Wilkin is allocated to the Fargo, North Dakota Center.
St. Paul National Cemetery Area Office, Send to: VA Medical Center, 54th & 48th Avenue, South, Minneapolis, MN 55417, (612) 725–6767 ext. 6311
St. Paul Data Processing Center, Send to: Fiscal Officer, VA Center, Federal Bldg., Ft. Snelling, St. Paul, MN 55111, (612) 725–3075
St. Paul Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 54th & 48th Avenue, South, Minneapolis, MN 55417, (612) 725–6767 ext 6311

Mississippi

Biloxi National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Biloxi, MS 39531, (601) 863–1972 ext. 225
Fiscal Officer, Biloxi Medical Center, Biloxi, MS 39531, (601) 863–1972 ext. 225
Corrinth National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1030 Jefferson Avenue, Memphis, TN 38104, (901) 523–8990
Fiscal Officer, Gulfport Medical Center, Gulfport, MS 39601, (601) 863–1972 ext. 225
Fiscal Officer, Jackson Medical Center, 1500 East Woodrow Wilson Drive, Jackson, MS 39216, (601) 362–4471 ext. 1281
Fiscal Officer, VA Regional Office, Federal Building, 100 W. Capitol Street, Suite 207, Jackson, MS 39269, (601) 965–4853
Natchez National Cemetery, Send to: Fiscal Officer, VA Medical Center, 1500 E. Woodrow Wilson Drive, Jackson, MS 39216, (601) 362–4471 ext. 1281
Process for VA service-connected benefits should also be sent to the Jackson Medical Center rather than to the Jackson Regional Office.

Missouri

Fiscal Officer, Columbia Medical Center, 800 Stadium Road, Columbia, MO 62501, (314) 443–2511
Jefferson City National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 800 Stadium Road, Columbia, MO 65201, (314) 443–2511 (314) 443–2511 ext. 6050
Fiscal Officer, Kansas City Medical Center, 4801 Linwood Blvd., Kansas City Medical Center, (816) 861–4700 ext. 214
Fiscal Officer, Poplar Bluff Medical Center, Poplar Bluff, MO 63901, (314) 686–4151
St. Louis National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, St. Louis, MO 63125, (314) 894–4931
Fiscal Officer, St. Louis Regional Office, 1520 Market Street, St. Louis, MO 63103, (314) 539–3112
Fiscal Officer, VA Medical Center, 1500 N. Westwood Blvd., Poplar Bluff, MO 63901, (314) 686–4151 ext. 265
St. Louis Veterans Canteen Service Field Office, Send to: Fiscal Officer, VA Medical Center, St. Louis, MO 63125, (314) 894–4631
Fiscal Officer, St. Louis Medical Center, St. Louis, MO 63125, (314) 894–4631
St. Louis Records Processing Center, Send to: Fiscal Officer, VA Regional Office, 1520 Market Street, St. Louis, MO 63103, (314) 539–3112
Springfield National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Fayetteville, AR 72701, (501) 443–4301

Montana

Fiscal Officer, Fort Harrison Medical & Regional Office Center, Fort Harrison, MT 59636, (406) 442–6410
Fiscal Officer, Miles City Medical Center, 210 N. Broadwell, Miles City, MT 59301, (406) 232–3060

Nebraska

Fiscal Officer, Grand Island Medical Center, 2201 N. Broadwell, Grand Island, NE 68801, (308) 382–3660 ext. 244
Fiscal Officer, Lincoln Regional Office, 100 Centennnial Mall North, Lincoln, NE 68510, (402) 437–5041
Fiscal Officer, Lincoln Medical Center, 600 South 70th Street, Lincoln, NE 68510, (402) 489–3802 ext. 332
Maxwell National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Grand Island, NE 68801, (308) 382–3660 ext. 244
Fiscal Officer, Omaha Medical Center, 4101 Woolworth Avenue, Omaha, NE, (402) 346–8800 ext 4538

Nevada

Las Vegas Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 1000 Locust Street, Reno, NV 89250, (702) 786–7200 ext. 244
Fiscal Officer, Reno Regional Office, 1201 Terminal Way, Reno, NV, (702) 784–5637
Jurisdiction over the following counties in California: Alpine, Lassen, Modoc and Mono.
Fiscal Officer, Reno Medical Center, 1000 Locust Street, Reno, NV 89520, (702) 786–7200 ext. 244
Henderson Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 1000 Locust Street, Reno, NV 89520, (702) 786–7200 ext. 244

New Hampshire

Fiscal Officer, Manchester Regional Office, 275 Chestnut Street, Manchester, NH 03103, (603) 666–7638
Fiscal Officer, Manchester Medical Center, 718 Smyth Road, Manchester, NH 03104, (603) 624–4366

New Jersey

Beverly National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, University & Woodland Avenues, Philadelphia, PA 19104, (215) 382–2400, ext. 291/292
Fiscal Officer, East Orange Medical Center, Tremont Avenue & So. Center St., East Orange, NJ 07019, (201) 676–1000 ext. 1771
Fiscal Officer, Lyons Medical Center, Lyons, NJ 07939, (201) 647–0180 ext. 4302
Newark Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, Tremont Avenue & So. Center St., East Orange, NJ 07019, (201) 676–1000 ext. 125
Fiscal Officer, Newark Regional Office, 20 Washington Place, Newark, NJ 07102, (201) 645–3507
Salem National Cemetery Area Office, Send to: Fiscal Officer, VA Center, 1601 Kirkwood Highway, Wilmington, DE 19805, (302) 994–2511
Fiscal Officer, Somerville Supply Depot, Somerville, NJ 08876, (210) 725–2540

New Mexico

Fiscal Officer, Albuquerque Regional Office, 500 Gold Avenue SW., Albuquerque, NM 87102, (505) 766–2204 (F) 474–2004
Fiscal Officer, Albuquerque Medical Center, 2100 Ridgecrest Drive SE., Albuquerque, NM 87108, (505) 265–1711
Santa Fe National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center,

2100 Ridgecrest Drive SE., Albuquerque, NM 87108, (505) 265–1711 ext. 2214

New York

Fiscal Officer, Albany Medical Center, 113 Holland Ave., Albany, NY 12202, (518) 462–3311 ext. 355

Fiscal Officer, VA Medical Center, 800 Irving Center, Syracuse, New York 13210, (315) 476–7461 ext. 2358

Albany VA Office, Send to: Fiscal Officer, VA Regional Office, 252 Seventh Avenue & 24th Street, New York, New York 10001, (211) 620–6293

Fiscal Officer, Batavia Medical Center, Redfield Parkway, Batavia, NY 14020, (716) 345–7500 ext. 215

Fiscal Officer, Bath Medical Center, Bath, NY 14810, (607) 776–2111 ext. 1502

Fiscal Officer, Bronx Medical Center, 140 W. Kings Bridge Road, Bronx, NY 10408, (212) 584–9000 exts. 1502, 1717

Fiscal Officer, Brooklyn Medical Center, 800 Poly Place, Brooklyn, NY 11209, (718) 630–3542

Brooklyn National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 800 Poly Place, Brooklyn, NY 11209, (718) 630–3541

Brooklyn Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 800 Poly Place, Brooklyn, NY 11209, (718) 630–3542

Fiscal Officer, Buffalo Regional Office, 111 West Huron Street, Buffalo, NY 14202, (716) 846–5251

Brooklyn Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 800 Poly Place, Brooklyn, NY 11209, (718) 630–3542

Fiscal Officer, Buffalo Regional Office, 111 West Huron Street, Buffalo, NY 14202, (716) 846–5251

Jurisdiction over all counties in New York not listed under the New York Regional Office.

Fiscal Officer, Buffalo Medical Center, 3495 Bailey Avenue, Buffalo, NY 14215, (716) 834–9200 ext. 2426, 584–900 ext. 1603 or 1717

Calverton National Cemetery Area Office, Send to: Fiscal Office, VA Medical Center, Northport, NY 11768, (516) 261–4400 ext. 7101/7103

Fiscal Officer, Canandiagua Medical Center, Canandiagua, NY 14424, (716) 394–2000 ext. 3368

Fiscal Officer, Castle Point Medical Center, Castle Point, NY 12511, (914) 882–5404

Elmira National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Bath, NY 14810, (607) 776–2111

Farmingdale National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Northport, NY 11768, (516) 261–4400 ext. 2462/2463

Fiscal Officer, Montrose Medical Center, Montrose, NY 10548, (914) 737–4400 ext. 2463

Fiscal Officer, New York Medical Center, First Avenue at East 24th Street, New York, NY 10010, (212) 686–7320

New York Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, First Avenue at East 24th Street, New York, NY 10010, (212) 686–7320

New York Prosthetics Center, Send to: Fiscal Officer, VA Regional Office, 252 Seventh Avenue, New York, NY 10001 (212) 620–6293

Fiscal Officer, New York Regional Office, 252 Seventh Avenue at 24th Street, New York, NY 10001, (212) 620–6293

Jurisdiction over the following counties in New York: Albany, Bronx, Clinton, Columbia, Delaware, Dutchess, Essex, Franklin, Fulton, Greene, Hamilton, Kings, Montgomery, Nassau, New York, Orange, Otsego, Putnam, Queens, Rensselaer, Richmond, Rockland, Saratoga, Schenectady, Schharie, Suffolk, Sullivan, Ulster, Warren, Washington and Westchester.

New York Veterans Canteen Service Field Office, Send to: Fiscal Officer, VA Medical Center, First Avenue at East 24th Street, New York, NY 10010, (212) 686–7320

First Officer, Northport Medical Center, Northport, NY 11768, (516) 261–4400 ext. 2462/2463

Rochester VA Office, Send to: Fiscal Officer, VA Regional Office, 111 West Huron Street, Buffalo, NY 14202, (716) 846–5251

Rochester Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Batavia, NY 14020, (716) 343–7500 ext. 215

Fiscal Officer, Syracuse Medical Center, Irving Avenue & University Place, Syracuse, NY 13210, (315) 476–7461

Syracuse VA Office, Send to: Fiscal Officer, VA Regional Office, 111 West Huron Street, Buffalo, NY 14202, (716) 846–5251

North Carolina

Fiscal Officer, Asheville Medical Center, 1100 Tunnel Road, Asheville, NC 28801 (704) 298–7911 ext. 5616

Fiscal Officer, Durham Medical Center, 508 Fulton Street, Durham, NC 27705 (919) 671–6913

Fiscal Officer, Fayetteville Medical Center, 2300 Ramsey Street, Fayetteville, NC 28301 (919) 488–2120

New Bern National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 2300 Ramsey Street, Fayetteville, NC 28301 (919) 488–2120

Raleigh National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 508 Fulton Street, Durham, NC 27705 (919) 286–0411 ext. 6469

Fiscal Officer, Salisbury Medical Center, Salisbury, NC 28144 (704) 636–2351

Salisbury National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Salisbury, NC 28144 (704) 636–2351

Wilmington National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 2300 Ramsey Street, Fayetteville, NC 28301 (919) 488–2120

Fiscal Officer, Winston-Salem Regional Office, 251 North Main Street, Winston-Salem, NC 27102 (919) 761–3513

Winston-Salem Outpatient Regional Office, Send to: Fiscal Officer, VA Medical Center, Salisbury, NC 28144, (704) 636–2351

North Dakota

Fiscal Officer, Fargo Medical and Regional Office Center, 21st & Elm, Fargo, ND 58102, (701) 232–3241 ext. 249

See listing under the St. Paul, Minnesota Center for the names of the counties in Minnesota which come under the jurisdiction of the Fargo, North Dakota Center.

Ohio

Fiscal Officer, Chillicothe Medical Center, 17273 State Route 104, Chillicothe, OH 45601, (614) 773–1141 ext. 203

Fiscal Officer, Cincinnati Medical Center, 3200 Vine Street, Cincinnati, OH 45220, (513) 550–5040 ext. 4113

Fiscal Officer, VA Medical Center, 2090 Kenny Road, Columbus, OH 43221, (614) 469–6712

Cincinnati VA Office, Send to: Fiscal Officer, VA Regional Office, 1240 East Ninth Street, Cleveland, OH 44199, (216) 522–3540

Fiscal Officer, Cleveland Regional Office, 1240 East Ninth Street, Cleveland, OH 44109, (216) 522–3540

Fiscal Officer, Cleveland Medical Center, 10,000 Brecksville Rd., Brecksville, OH 44141, (216) 526–3030 ext. 7170

Fiscal Officer, Columbus Outpatient Clinic, 456 Clinic Drive, Columbus, OH 43210, (614) 469–6712

Columbus VA Office, Send to: Fiscal Officer, VA Regional Office, 1240 East Ninth Street, Cleveland, OH 44199, (216) 522–3540

Oregon

Portland National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 3710 SW U.S. Veterans Hospital Road, Portland, OR 97201, (503) 220–8262 ext. 6948

Fiscal Officer, Portland Regional Office, 1220 SW 3rd Avenue, Portland, OR 97204, (503) 221–2521

Fiscal Officer, Portland Medical Center, 3710 SW U.S. Veterans Hospital Road, Portland, OR 97201, (503) 220–8262 ext. 6948

Portland Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 3710 SW U.S. Veterans Hospital Road, Portland, OR 97210, (503) 222–9221 ext. 6984

Fiscal Officer, VA Medical Center, Garden Valley Blvd., Roseburg, OR 97470, (503) 440–1000 ext. 4261

Roseburg National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Garden Valley Blvd., Roseberg, OR 97470, (503) 672–4411

Fiscal Officer, White City Domiciliary, White City, OR 97501, (503) 826–2111 ext. 241

White City National Cemetery Area, Send to: Fiscal Officer, VA Office Domiciliary, White City, OR 97501, (503) 826–2111 ext. 241

Pennsylvania

Fiscal Officer, Altoona Medical Center, Altoona, PA 16603, (814) 943–8164 ext. 7046

Annville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Lebanon, PA 17042, (717) 272–6621 ext. 229

Fiscal Officer, VA Medical Center, Butler, PA 16001, (412) 287–4781 ext. 4505

Fiscal Officer, Coatsville Medical Center, Coatsville, PA 19320, (215) 384–7711 ext. 342

Fiscal Officer, Erie Medical Center, 135 East 38th Street, Erie, PA 16501, (814) 868–8661

Harrisburg Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Lebanon, PA 17042, (717) 272–6621 ext. 229

Fiscal Officer, Lebanon Medical Center, Lebanon, PA 17042, (717) 272–6621 ext. 229

Fiscal Officer, Philadelphia Center (Regional Office), P.O. Box 8079, Philadelphia, PA 19101, (215) 951–5321

Jurisdiction over the following counties in Pennsylvania: Adams, Berks, Bradford, Bucks, Cameron, Carbon, Centre, Chester, Clinton, Columbia, Cumberland, Dauphin, Delaware, Franklin, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mifflin, Monore, Montgomery, Monroe, Montour, Northampton, Northumberland, Perry, Philadelphia, Pike, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming and York.

Philippines

1. Manila Regional Office Outpatient Clinic
2. Manila Regional Office Center

For either of the above, send to: Director, U.S. Veterans Administration, APO, San Francisco, CA 96528, 011–632–521–7116 ext. 2560

Puerto Rico

Raymon National Cemetery Area Office, Send to: Fiscal Officer, VA Center, GPO, Box 4867, San Juan, PR 00936, (809) 766–5115

Hato Regional Office, GPO, Box 4867, San Juan, PR 00936, (809) 766–5115

Mayaguez Outpatient Clinic Substation, Send to: Fiscal Officer, VA Center, GPO, Box 4867, San Juan, PR 00936, (809) 763–0275

Rio Piedras Medical and Regional Office Center, Send to: Fiscal Officer, VA Center, GPO, Box 4867, San Juan, PR 00936, (809) 763–0275

Fiscal Officer, VA Medical Center, One Veterans Plaza, San Juan, PR 00927–5800, (809) 766–5365 or 5953

Rhode Island

Fiscal Officer, Providence Regional Office, 321 South Main Street, Providence, RI 02903, (401) 523–4439

Jurisdiction over the following towns and counties in Massachusetts: All towns in Bristol County except Mansfield and Easton, the towns of Lakeville, Middleboro, Carver, Rochester, Mattapoisett, Marion, and Wareham in Plymouth County; and the counties of Dukes, Nantucket and Barnstable.

Fiscal Officer, Providence Medical Center, Davis Park, Providence, RI 02908, (401) 475–3019

South Carolina

Beaufort National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 109 Bee Street, Charleston, SC 29403, (803) 577–5011 ext. 222

Fiscal Officer, Charleston Medical Center, 109 Bee Street, Charleston, SC 29403, (803) 577–5011 ext. 222

Fiscal Officer, Columbia Regional Office, 1801 Assembly Street, Columbia, SC 29201, (803) 765–5210

Fiscal Officer, Columbia Medical Center, Columbia, SC 29201, (803) 776–4000 ext. 150

Florence National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Columbia, SC 29201, (803) 776–4000 ext. 149

Greenville Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Columbia, SC 29201, (803) 776–4000 ext. 149

South Dakota

Fort Meade National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Fort Meade, SD 57741, (605) 347–2511 ext. 272

Fiscal Officer, VA Medical Center, Fort Meade, SD 57741, (605) 347–2511 ext. 272

Hot Springs National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Hot Springs, SD 57747, (605) 745–4101 ext. 246

Fiscal Officer, Hot Springs Medical Center, Hot Springs, SD 57747, (605) 745–4101

Tennessee

Chattanooga Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 1310 24th Avenue, South, Nashville, TN 37203, (615) 327–4651

Chattanooga National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Murfreesboro, TN 37123, (615) 893–1360

Knoxville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Mountain Home, TN 37684, (615) 926–1171 ext. 7601

Knoxville Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 1320 24th Avenue, South, Nashville, TN 37203, (615) 327–4651 ext. 553

Madison National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1320 24th Avenue, South, Nashville, TN 37203, (615) 327–4651 ext. 553

Fiscal Officer, Memphis Medical Center, 1030 Jefferson Avenue, Memphis, TN 38104, (901) 523–8990 ext. 5050

Memphis National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1030 Jefferson Avenue, Memphis, TN 38104, (901) 523–8901 ext. 50

Fiscal Officer, Mountain Home Medical Center, Mountain Home, TN 37684, (615) 926–1171 ext. 7601

Mountain Home National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Mountain Home, TN 37684, (615) 926–1171

Fiscal Officer, Murfreesboro Medical Center, Murfreesboro, TN 37130, (615) 893–1360 ext. 3198

Fiscal Officer, National Regional Office, 110 Ninth Avenue South, Nashville, TN 37203, (615) 736–5352

Fiscal Officer, Medical Center, 1310 24th Avenue, South, Nashville, TN 37212, (615) 327–4751 ext. 5147

Texas

Fiscal Officer, Amarillo Medical Center, 6010 Amarillo Blvd. W., Amarillo, TX 79106, (806) 355–9703 ext. 7370

Fiscal Officer, Austin Data Processing Center, 1615 East Woodward Street, Austin, TX 78772, (512) 482–4028

Beaumont Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 2002 Holcombe Blvd., Houston, TX 77211, (713) 795–7493

Fiscal Officer, Big Spring Medical Center, Big Spring, TX 79720, (915) 263–7361 ext. 326

Fiscal Officer, Bonham Medical Center, East 96th & Lipscomb Street, Bonham, TX 75418, (218) 583–2111 ext. 240

Corpus Christi Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284, (512) 696–9660 ext. 5871

Fiscal Officer, Dallas Medical Center, 4500 South Lancater Road, Dallas, TX 75216, (214) 376–5451 ext. 5238

Fiscal Officer, Houston Regional Office, 2515 Murworth Drive, Houston, TX 77054, (713) 660–4121

Jurisdiction over the country of Mexico and the following counties in Texas: Angelina, Aransas, Atascosa, Austin, Bandera, Bee, Bexar, Blanco, Brazoria, Brewster, Brooks, Caldwell, Calhoun, Cameron, Chambers, Colorado, Comal, Crockett, DeWitt, Dimmitt, Duval, Edwards, Fort Bend, Frio, Galveston, Gillespie, Goliad, Gonzales, Grimes, Guadalupe, Hardin, Harris, Hays, Hidalgo, Houston, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Karnes, Kendall, Kennedy, Kerr, Kimble, Kinney, Kleberg, LaSalle, Lavaca, Liberty, Live Oak, McCulloch, McMullen, Mason, Matagorda, Maverick, Medina, Menard, Montgomery, Necogdoches, Newton, Nueces, Orange, Pecos, Polk, Real, Refugio, Sabine, San Augustine, San Jacinto, San Patrico, Schleicher, Shelby, Starr, Sutton, Terrell, Trinity, Tyler, Val Verde, Victoria, Walker, Waller, Washington, Webb, Wharton, Willacy, Wilson, Zapata, and Zavala.

Houston National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 2002 Holcombe Blvd., Houston, TX 77211, (713) 795–7493

Fiscal Officer, Kerrville Medical Center, Kerrville, TX 78028, (512) 896–2020 ext. 300

Dallas VA Office, Send to: Fiscal Officer, VA Regional Office, 1400 North Valley Mills Drive, Waco, TX 76799, (817) 757–6454

Fiscal Officer, El Paso Outpatient Clinic, 5919 Brook Hollow Drive, El Paso, TX 79925, (915) 543–7460/7961

Fort Bliss National Cemetery Area Office, Send to: Fiscal Officer, VA Outpatient Clinic, 5919 Brook Hollow Drive, El Paso, TX 79925, (915) 543–7960/7961

Fiscal Officer, Houston Medical Center, 2002 Holcombe Blvd., Houston, TX 77211, (713) 795–7493

Kerrville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Kerrville, TX 78028, (512) 896–2020 ext 300

Lubbock VA Office, Send to: Fiscal Officer, VA Regional Office, 1400 North Valley Mills Drive, Waco, TX 76799, (817) 657–6464 ext. 635

Fiscal Officer, Lubbock Outpatient Clinic, 1205 Texas Avenue, Lubbock, TX 79401, (806) 762–7209

Fiscal Officer, Marlin Medical Center, 1016 Ward Street, Marlin, TX 76661, (817) 883–3511 ext. 224

McAllen Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284, (512) 696–9660 ext. 5871

Fiscal Officer, San Antonio Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284, (512) 696–9660 ext. 5871

San Antonio VA Office, Send to: Fiscal Officer, VA Regional Office, 2515 Murworth Drive, Houston, TX 77054, (713) 226–4185

San Antonio National Cemetery Area Office, Send to: Fiscal Officer, 7400 Merton Minter

Blvd., San Antonio, TX 78284, (512) 696–9660 ext. 5871
San Antonio National Cemetery Area Office (Fort Sam Houston), Send to: Fiscal Officer, 7400 Merton Minter Blvd., San Antonio, TX 78284, (512) 696–9660 ext. 5871
Fiscal Officer, Temple Medical Center, Temple, TX 76501, (817) 778–4811
Fiscal Officer, Waco Regional Office, 1400 North Valley Mills Drive, Waco, TX 76710, (817) 756–6454

Jurisdiction over all counties in Texas not listed under the Houston Regional Office.

Fiscal Officer, Waco Medical Center, Memorial Drive, Waco, TX 76703, (817) 752–6581
Waco Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, Memorial Drive, Waco, TX 76703, (817) 752–6581

Utah

Fiscal Officer, Salt Lake City Regional Center, 125 South State Street, Salt Lake City, UT 84147, (801) 524–5361
Fiscal Officer, Salt Lake City Medical Center, 500 Foothill Blvd., Salt Lake City, UT 85148, (810) 584–1213

Vermont

Fiscal Officer, White River Junction, Medical and Regional Office Center, White River Junction VT 05001, (802) 295–9363 ext. 1034

Virginia

Alexandria National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 50 Irving Street NW., Washington, DC 20422, (202) 745–8228
Culpeper National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Martinsburg, WV 25401, (304) 263–0811 ext. 3176
Danville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Salem, VA 24153, (703) 982–2463
Hopewell National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1201 Broad Rock Road, Richmond, VA 23249, (804) 230–1304
Leesburg National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 50 Irving Street NW., Washington, DC 20422, (202) 745–8228
Mechanicsville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1201 Broad Rock Road, Richmond, VA 23249, (804) 230–1304
Fiscal Officer, Hampton Medical Center, Hampton, VA 23667, (807) 722–9961
Hampton National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Hampton, VA 23667, (807) 722–9961
Quantico National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 50 Irving Street NW., Washington, DC 20422, (202) 745–8228
Fiscal Officer, Richmond Medical Center, 1201 Broad Rock Road, Richmond, VA 23249, (804) 230–1304
Richmond National Cemetery Area Office, Send to: Fiscal Officer VA Medical Center, 1201 Broad Rock Road, Richmond, VA 23249, (808) 230–1304
Fiscal Officer, Roanoke Regional Office, 210 Franklin Road SW., Roanoke, VA 24011, (703) 982–6116

Jurisdiction over Fairfax and Arlington Counties and the cities of Alexandria, Fairfax, and Falls Church is allocated to the Washington, DC, Regional Office.

Fiscal Officer, Salem Medical Center, Salem, VA 24153, (703) 982–2463
Sandston National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1201 Broad Rock Road, Richmond, VA 23249, (804) 231–9011 ext. 205
Staunton National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Salem, VA 24135, (703) 982–2463
Winchester National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Martinsburg, WV 25401, (304) 263–0811 ext. 3176

Washington

Fiscal Officer, American Lake Medical Center, Tacoma, WA 98493, (206) 582–8440 ext 6049
Fiscal Officer, Seattle Regional Office, 915 Second Avenue, Seattle, WA 98714, (206) 442–5025
Fiscal Officer, Seattle Medical Center, 1160 S. Columbian Way, Seattle, WA 98198, (206) 764–2226
Seattle Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 1160 S. Columbia Way, Seattle, WA 98198, (206) 764–2226
Fiscal Officer, Spokane Medical Center North, 4815 Assembly Street, Spokane, WA 99205, (509) 327–0283 ext. 286
Vancouver Medical Center, Send to: Fiscal Officer, VA Medical Center, 3710 SW U.S. Veterans Hospital Road, Portland, OR 97201, (503) 220–8262 ext. 6948

West Virginia

Fiscal Officer, Beckley Medical Center, 200 Veterans Avenue, Beckley, WV 25801, (304) 255–2121 ext. 4174
Fiscal Officer, Clarksburg Medical Center, Clarksburg, WV 26301, (304) 623–3461 ext. 3389
Grafton National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Clarksburg, WV 26301, (304) 623–3461 ext. 335
Fiscal Officer, Huntington Regional Office, 5202 Eighth Street, Huntington, WV 25701, (304) 529–5477

Jurisdiction over the counties of Brooke, Hancock, Marshall and Ohio is allocated to the Pittsburgh, Pennsylvania Regional Office.

Fiscal Officer, Huntington Medical Center, 1540 Spring Valley Drive, Huntington, WV 25704, (304) 429–6741 ext. 2422
Fiscal Officer, Martinsburg Medical Center, Martinsburg, WV 25401, (304) 263–0811 ext. 3176
Wheeling Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, University Drive C, Pittsburgh, PA 15240, (412) 683–7675

Wisconsin

Fiscal Officer, Madison Medical Center, 2500 Overlook Terrace, Madison, WI 53705, (608) 262–7050
Fiscal Officer, Milwaukee (Wood) Regional Office, P.O. Box 6, Wood, WI 53193, (414) 671–8121
Fiscal Officer, Tomah Medical Center, Tomah, WI 54660, (608) 372–1786
Fiscal Officer, VA Medical Center, 5000 West National Avenue, Milwaukee, WI 53295, (414) 384–2000 ext. 2591
Wood National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 5000 West National Avenue, Milwaukee, WI 53295, (414) 384–2000 ext. 2591

Wyoming

Fiscal Officer, Cheyenne Medical & Regional Office Center, 2360 East Pershing Blvd., Cheyenne, WY 82001, (307) 778–7339
Fiscal Officer, Sheridan Medical Center, Sheridan, WY 82801, (307) 672–3473

II. AGENCIES

(Unless otherwise indicated below, all agencies of the executive branch shall be subject to service of legal process brought for the enforcement of an individual's obligation to provide child support and/or make alimony payments where such service is sent by certified or registered mail, return receipt requested, or by personal service, upon the head of the agency.)

Agency for International Development

For employees of the Agency for International Development and the Trade and Development Program:

Assistant General Counsel for Employee and Public Affairs (GC/EPA), Agency for International Development, Room 6892, Washington, DC 20523–0076, (202) 647–8218

Central Intelligence Agency

Director of Personnel Policy, Planning, and Management, Central Intelligence Agency, Washington, DC 20505, or
Chief, Special Activities Staff, Office of Personnel Policy, Planning, and Management, Central Intelligence Agency, Washington, DC 20505, (703) 351–3452

Commission on Civil Rights

Solicitor, Commission on Civil Rights, Room 710, 1121 Vermont Avenue NW., Washington, DC 20425, (202) 254–3070

Commodity Futures Trading Commission

Director of Personnel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254–3275

Consumer Product Safety Commission

General Counsel, 5401 Westbard Avenue Washington, DC 20207, (301) 492–6980

Export-Import Bank of the United States

General Counsel, Export-Import Bank of the United States, Room 947, 811 Vermont Avenue NW., Washington, DC 20571 (Stop No. 292), (202) 566–8334

Equal Employment Opportunity Commission

Director, Employee Relations Division, Personnel Management Services, Equal Employment Opportunity Commission, 1801 L Street NW., Washington, DC 20507, (202) 663–4354

Farm Credit Administration

Chief, Fiscal Management Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4122

Federal Deposit Insurance Corporation

Counsel, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429, (202) 898–3680

Federal Election Commission

Accounting Officer, Federal Election Commission, 999 E Street NW., Washington, DC 20463, (202) 376–5270

Federal Home Loan Bank Board

Director, Administration Division, Office of the General Counsel, Federal Home Loan Bank Board, 3rd Floor, 1700 G Street NW., Washington, DC 20552, (202) 377–6462

Federal Labor Relations Authority

Director of Personnel, Federal Labor Relations Authority, Room 225, 500 C Street SW., Washington, DC 20424, (202) 382–0751

Federal Maritime Commission

Director of Personnel or Deputy Director of Personnel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523–5773

Federal Mediation and Conciliation Service

General Counsel, Federal Mediation and Conciliation Service, 2100 K Street NW., Washington, DC 20427, (202) 653–5305

Federal Retirement Thrift Investment Board

Payments to Board employees:

Director of Administration, Federal Retirement Thrift Investment Board, Suite 500, 805 Fifteenth Street NW., Washington, DC 20005, (202) 523–7061

Benefits from the Thrift Savings Fund:

General Counsel, Federal Retirement Thrift Investment Board, Suite 500, 805 Fifteenth Street NW., Washington, DC 20005, (202) 523–6367

General Services Administration

1. Region 1 (Maine, Vermont, New Hampshire, Massachusetts, Connecticut):

Regional Counsel, 10 Causeway Street, Boston, MA 02222, (617) 835–5896

2. Region 2 (New York, New Jersey, Puerto Rico, the Virgin Islands):

Regional Counsel, 26 Federal Plaza, New York, NY 10007, (212) 264–8306

3. Region 3 (Pennsylvania, West Virginia, Maryland, Virginia, less the greater metropolitan area of Washington, DC):

Regional Counsel, Ninth and Market Streets, Philadelphia, PA 19107, (215) 597–1319

4. Region 4 (Kentucky, Tennessee, North Carolina, Mississippi, Alabama, Georgia, South Carolina, Flordia):

Regional Counsel, R.B. Russell Federal Building and U.S. Courthouse, 75 Spring Street SW., Atlanta, GA 30303, (404) 242–0915

5. Region 5 (Minnesota, Wisconsin, Illinois, Indiana, Michigan, Ohio):

Regional Counsel, 230 South Dearborn Street, Chicago, IL 60604, (312) 353–5392

6. Region 6 (Nebraska, Iowa, Kansas, Missouri):

Regional Counsel, 1500 E. Bannister Road, Kansas City, MO 64131, (816) 926–7212

7. Region 7 (New Mexico, Texas, Oklahoma, Arkansas, Louisiana):

Regional Counsel, 819 Taylor Street, Fort Worth, TX 76102, (817) 334–2325

8. Region 8 (Montana, North Dakota, South Dakota, Wyoming, Utah, Colorado):

Regional Counsel, Building 41—Denver Federal Center, Denver, CO 80225, (303) 776–7352

9. Region 9 (California, Nevada, Arizona, Hawaii, Guam):

Regional Counsel, 525 Market Street, San Francisco, CA 94105, (415) 454–9309

10. Region 10 (Washington, Oregon, Idaho, Alaska):

Regional Counsel, GSA Center, Auburn, WA 98002, (206) 396–7007

11. Greater metropolitan area of Washington, DC (includes parts of Maryland and Virginia):

Regional Counsel, 7th & D Streets NW., Washington, DC 20547, (202) 472–1809

Interstate Commerce Commission

Chief, Budget and Fiscal Office, Interstate Commerce Commission, 12th and Constitution Avenue NW., Washington, DC 20423

Merit Systems Protection Board

Director, Office of Administration, Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, DC 20419, (202) 653–5805

National Aeronautics and Space Administration

NASA Headquarters

Associate General Counsel (General), Attention: SN Code GG, NASA Headquarters, 400 Maryland Avenue SW., Washington, DC 20546, (202) 453–2465

NASA Field Installations

Chief Counsel, Ames Research Center (including Dryden Flight Research Center), Moffett Field, CA 94035, (415) 694–5103

Chief Counsel, Goddard Space Flight Center (including Wallops Flight Center), Greenbelt, MD 20771, (301) 286–8181

Chief Counsel, Johnson Space Center, Houston, TX 77058, (713) 483–3021

Chief Counsel, Kennedy Space Center, Kennedy Space Center, FL 32899, (407) 867–2550

Chief Counsel, Langley Research Center, Hampton, VA 23665, (805) 865–3397

Chief Counsel, Lewis Research Center, Cleveland, OH 44135, (216) 433–2318

Chief Counsel, Marshall Space Flight Center, Marshall Space Flight Center, AL 35812, (205) 544–0012

Chief Counsel, John C. Stennis Space Center, Stennis Space Center, MS 39529–6000, (601) 688–2164

National Archives and Records Administration

Director, Legal Services Staff, National Archives and Records Administration (NSL), Washington, DC 20408, (202) 523–3618

National Capital Planning Commission

Administrative Officer, National Capital Planning Commission, 1325 G Street NW., Washington, DC 20576, (202) 724–0170

National Credit Union Administration

Director, Division of Personnel, National Credit Union Administration, 1776 G Street NW., Washington, DC 20456, (202) 357–1156

National Endowment for the Arts

General Counsel, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Room 522, Washington, DC 20506, (202) 682–5418

National Endowment for the Humanities

General Counsel, National Endowment for the Humanities, Room 530, Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506, (202) 786–0322

National Labor Relations Board

Finance Officer, National Labor Relations Board, 1717 Pennsylvania Avenue NW., Room 1300, Washington, DC 20570, (202) 254–9307

National Mediation Board, Administrative Officer, National Mediation Board, Washington, DC 20572, (202) 523–5950

National Railroad Adjustment Board

Staff Director/Grievances, National Railroad Adjustment Board, 202 S. State Street, Chicago, IL 60604

National Science Foundation

General Counsel, National Science Foundation, 1800 G Street NW., Washington, DC 20550, (202) 634–4266

National Transportation Safety Board

Director, Personnel and Training Division, National Transportation Safety Board, 800 Independence Avenue SW., Washington, DC 20594, ATTN: AD–30, (202) 382–6718

Navajo and Hopi Indian Relocation Commission

Attorney, Navajo and Hopi Indian Relocation Commission, 201 East Birch, Room 11, P.O. Box KK, Flagstaff, AZ 86002, (602) 779–2721

Nuclear Regulatory Commission

Controller, Nuclear Regulatory Commission, Washington, DC 20555, (301) 492–4750

Office of Personnel Management

Payments to OPM employees:

General Counsel, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, (202) 632–5090

Payments of retirement benefits under the Civil Service Retirement System and the Federal Employees Retirement System:

Associate Director for Retirement and Insurance, Office of Personnel Management, Allotment Section, P.O. Box 17, Washington, DC 20044, (202) 632–5287

Overseas Private Investment Corporation

Director of Personnel, Overseas Private Investment Corporation, 1615 M Street NW., Washington, DC 20527, (202) 457–7082

Panama Canal Commission

Director, Office of Executive Administration, Panama Canal Commission, APO Miami 34011, 52–3519

Pension Benefit Guaranty Corporation

General Counsel or Deputy General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006, (202) 778–8820

Railroad Retirement Board

Deputy General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, (312) 751–4935

Selective Service System

General Counsel, Selective Service System, 1023 31st Street NW., Washington, DC 20435, (202) 724–1167

Small Business Administration

[District Directors are designated to accept legal process for their respective districts as set forth in 13 CFR 101.3–1.]

District Director, Birmingham District Office, 908 South 20th Street, Birmingham, AL 35205, (205) 254–1344

District Director, Anchorage District Office, 1016 West 6th Avenue, Anchorage, AK 99501, (907) 271–4022

District Director, Phoenix District Office, 3030 North Central Avenue, Phoenix, AZ 85012, (602) 261–3611

District Director, Little Rock District Office, 611 Gaines Street, Little Rock, AR 72201, (501) 378–5871

District Director, Los Angeles District Office, 350 S. Figueroa Street, Los Angeles, CA 90071, (213) 688–2956

District Director, San Diego District Office, 880 Front Street, San Diego, CA 92188, (714) 239–5440

District Director, San Francisco District Office, 211 Main Street, San Francisco, CA 94105, (415) 556–7490

District Director, Denver District Office, 721 19th Street, Denver, CO 80202, (303) 837–2607

District Director, Hartford District Office, One Financial Plaza, Hartford, CT 06106, (203) 244–3600

District Director, Washington District Office, 1030 15th Street NW., Washington, DC 20417, (202) 655–4000

District Director, Jacksonville District Office, 400 West Bay Street, Jacksonville, FL 32202, (904) 791–3782

District Director, Miami District Office, 2222 Ponce De Leon Blvd., Coral Gables, FL 33134, (305) 350–5521

District Director, Atlanta District Office, 1720 Peachtree Street, NW., Atlanta, GA 30309, (404) 347–2441

District Director, Honolulu District Office, 300 Ala Moana, Honolulu, HI 96850, (808) 546–8950

District Director, Boise District Office, 1005 Main Street, Boise, ID 83701, (208) 384–1096

District Director, Des Moines District Office, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4422

District Director, Chicago District Office, 219 South Dearborn Street, Chicago, IL 60604, (312) 353–4528

District Director, Indianapolis District Office, 575 N. Pennsylvania Street, Indianapolis, IN 46204, (317) 269–7272

District Director, Wichita District Office, 110 East Waterman Street, Wichita, KS 67202, (316) 267–6571

District Director, Louisville District Office, 600 Federal Place, Louisville, KY 40201, (502) 582–5971

District Director, New Orleans District Office, 1001 Howard Avenue, New Orleans, LA 70113, (504) 589–6685

District Director, Augusta District Office, 40 Western Avenue, Augusta, ME 04330, (207) 622–6171

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District Director, Boston District Office, 150 Causeway Street, Boston, MA 02114, (617) 223–2100

District Director, Detroit District, 477 Michigan Avenue, Detroit, MI 48226, (313) 226–6075

District Director, Minneapolis District Office, 12 South 6th Street, Minneapolis, MN 55402, (612) 725–2362

District Director, Jackson District Office, 100 West Capitol Street, Jackson, MS 39201, (601) 969–4371

District Director, Kansas City District Office, 1150 Grande Avenue, Kansas City, MO 64106, (816) 374–3416

District Director, St. Louis District Office, One Mercantile Center, St. Louis, MO 63101, (314) 425–4191

District Director, Helena District Office, 301 South Park Avenue, Helena, MT 59601, (406) 449–5381

District Director, Omaha District Office, 19th & Farnum Street, Omaha, NE 68102, (404) 221–4691

District Director, Las Vegas District Office, 301 E. Stewart, Las Vegas, NV 89101, (702) 385–6611

District Director, Concord District Office, 55 Pleasant Street, Concord, NH 03301, (603) 224–4041

District Director, Newark District Office, 970 Broad Street, Newark, NJ 07102, (201) 645–2434

District Director, Albuquerque District Office, 5000 Marble Avenue, NE., Albuquerque, NM 87110, (505) 766–3430

District Director, New York District Office, 26 Federal Plaza, New York, NY 10007, (212) 264–4355

District Director, Syracuse District Office, 100 South Clinton Street, Syracuse, NY 13260, (315) 423–5383

District Director, Charlotte District Office, 230 S. Tryon Street, Charlotte, NC 28202, (704) 371–6111

District Director, Fargo District Office, 657 2nd Avenue, North, Fargo, ND 58108, (701) 237–5771

District Director, Sioux Falls District Office, 101 South Main Avenue, Sioux Falls, ND 57102, (605) 336–2980

District Director, Cleveland District Office, 1240 East 9th Street, Cleveland, OH 44199, (216) 522–4180

District Director, Columbus District Office, 85 Marconi Boulevard, Columbus, OH 43215, (614) 469–6860

District Director, Oklahoma City District Office, 200 NW. 5th Street, Oklahoma City, OK 73102, (405) 231–4301

District Director, Portland District Office, 1220 SW. Third Avenue, Portland, OR 97204, (503) 221–2682

District Director, Philadelphia District Office, 231 St. Asaphs Road, Bala Cynwyd, PA 19004, (215) 597–3311

District Director, Pittsburgh District Office, 1000 Liberty Avenue, Pittsburgh, PA 15222, (412) 644–2780

District Director, Hato Rey District Office, Chardon & Bolivia Streets, Hato Rey, PR 00918, (809) 753–4572

District Director, Providence District Office, 57 Eddy Street, Providence, RI 02903, (401) 528–4580

District Director, Columbia District Office, 1835 Assembly Street, Columbia, SC 29201

District Director, Nashville District Office,, 404 James Robertson Parkway, Nashville, TN 37219, (615) 251–5881

District Director, Dallas District Office, 1100 Commerce Street, Dallas, TX 75242, (214) 767–0605

District Director, Houston District Office, 500 Dallas Street, Houston, TX 77002, (713) 226–4341

District Director, Lower Rio Grande Valley District Office, 222 East Van Buren Street, Harlingen, TX 78550, (512) 423–4534

District Director, Lubbock District Office, 1205 Texas Avenue, Lubbock, TX 79401, (806) 762–7466

District Director, San Antonio District Office, 727 East Durango Street, San Antonio, TX 78206, (512) 229–6250

District Director, Salt Lake City District Office, 125 South State Street, Salt Lake City, UT 84138, (314) 425–5800

District Director, Montpelier District Office, 87 State Street, Montpelier, VT 05602, (802) 229–0538

District Director, Richmond District Office, 400 North 8th Street, Richmond, VA 23240, (804) 782–2617

District Director, Seattle District Office, 915 Second Avenue, Seattle, WA 98174, (206) 442–5534

District Director, Spokane District Office, West 920 Riverside Avenue, Spokane, WA 99210, (509) 456–5310

District Director, Clarksburg District Office, 109 North 3rd Street, Clarksburg, WV 26301, (304) 623–5631

District Director, Madison District Office, 212 E. Washington Avenue, Madison, WI 53703, (608) 264–5261

District Director, Casper District Office, 100 East B Street, Casper, WY 82602, (307) 265–5266

Tennessee Valley Authority

Payments to TVA employees: Chairman, Board of Directors, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, TN 37902, (615) 632–2101

Payments of retirement benefits under the TVA Retirement System: Chairman, Board of Directors, TVA Retirement System, 500 West Summit Hill Drive, Knoxville, TN 37902, (615) 632–0202

United States Information Agency

General Counsel, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547, (202) 485–7976

United States Soldiers' & Airmen's Home

Chief, Employee Management Branch, United States Soldiers' and Airmen's Home, Box 1200, 3700 North Capitol Street NW., Washington, DC 20317, (301) 722–3425

III. THE UNITED STATES POSTAL SERVICE AND THE POSTAL RATE COMMISSION

United States Postal Service

Service of process may be made on the postmaster or head of the installation where the employee obligor works. However, if the installation where the employee obligor works cannot be determined, service of process may be made on the appropriate Chief Field Counsel. The geographic areas served by the Chief Field Counsels and their addresses are as follows:

Chief Field Counsel, Northeast Region, U.S. Postal Service, 6 Griffin Park Road North, Windsor, CT 10098–0120, (203) 285–7127

Serving: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, northern New Jersey (ZIP codes beginning with 070–079 and 085–089), New York, and the Caribbean Islands.

Chief Field Counsel, Eastern Region, U.S. Postal Service, 1845 Walnut Street, P.O. Box 8601, Philadelphia, PA 19197–0120, (215) 496–6011

Serving: The District of Columbia, Delaware, Kentucky, Ohio, Maryland, Pennsylvania, Virginia, West Virginia, southern New Jersey (ZIP codes beginning with 080–084), North Carolina and South Carolina (ZIP codes beginning with 290–292).

Chief Field Counsel, Southern Region, U.S. Postal Service, 1407 Union Avenue, Memphis, TN 38166–0170, (901) 722–7350

Serving: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Oklahoma, South Carolina (ZIP codes beginning with 298–299), Tennessee and Texas.

Chief Field Counsel, Central Region, U.S. Postal Service, 300 South Riverside Street, Chicago, IL 60606–0170, (212) 765–5264

Serving: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Wisconsin, Colorado and Wyoming.

Chief Field Counsel, Western Region, U.S. Postal Service, 850 Cherry Avenue, San Bruno, CA 94099–0170, (415) 742–4810

Serving: Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and the Pacific Islands including the Trust Territory.

Processing of legal process in garnishment actions will be substantially expedited by serving the postmaster or installation head rather than the Chief Field Counsel.

Postal Rate Commission

Chief Administrative Officer, Postal Rate Commission, 2000 L Street NW., Washington, DC 20268, (202) 254–3880

IV. THE DISTRICT OF COLUMBIA, AMERICAN SAMOA, GUAM, AND THE VIRGIN ISLANDS

The District of Columbia

Assistant City Administrator for Financial Management, The District Building, Room 412, 14th and Pennsylvania Avenue NW., Washington, DC 20004, (202) 727–6979

American Samoa

Director of Administrative Service, American Samoa Government, Pago Pago, American Samoa 96799, (684) 633–4155

Guam

Attorney General, P.O. Box DA, Agana, Guam 96910, 472–6841 (Country Code 671)

The Virgin Islands

Attorney General, P.O. Box 280, St. Thomas, VI 00801, (809) 774–1163

V. INSTRUMENTALITY

Smithsonian Institution

For service of process in garnishment proceedings for child support and/or alimony of present Smithsonian Institution employees:

General Counsel, The Smithsonian Institution, Room 408, 1000 Jefferson Drive SW., Washington, DC 20560, (202) 381–5866

For service of process in garnishment proceedings for child support and/or alimony involving retirement annuities of former trust fund employees of the Smithsonian Institution:

General Counsel, Teachers Insurance and Annuity Association of America, College Retirement Equity Fund (TIAA/CREF), 730 Third Avenue, New York, NY 10017, (212) 490–9000

[FR Doc. 90–908 Filed 1–12–90; 8:45 am]

BILLING CODE 6325–01–M

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5 CFR Part 591

RIN 3206–AB34

Cost of Living Allowances and Post Differentials (Nonforeign Areas)

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is revising its regulations on the nonforeign area cost-of-living allowance (COLA) and post differential authorized by 5 U.S.C. 5941. This amendment is necessary to bring the terminology into conformance with current usage, clarify certain provisions, modify the method used to calculate rates, and ensure that the requirements of the Administrative Procedure Act are met or exceeded.

EFFECTIVE DATE: February 15, 1990.

FOR FURTHER INFORMATION CONTACT: Barry E. Shapiro, (202) 632–7471.

SUPPLEMENTARY INFORMATION: On June 2, 1989, OPM published proposed regulations in the **Federal Register** (54 FR 23664) providing that interested persons could file comments through August 31, 1989. We received over 100 written comments from employees, employee groups, agencies, members of Congress, and attorneys and experts hired by employee groups.

Several changes and clarifications were made to the proposed regulations in response to the comments received. These changes are discussed in the sections below.

General Comments. Some individuals interpreted the proposed rule as a proposal to reduce existing allowance rates. The changes in methodology we are adopting are designed to improve the measurement of living costs used to set the allowance rates, and are not intended either to reduce or increase allowance rates.

Many commenters remarked that the proposed rule was too vague and imprecise to make informed comment possible. We disagree. OPM received extensive, detailed, and carefully-reasoned comments from over 100 interested parties. This final rule is intended to serve as the vehicle for publishing a broad methodology to establish a sound basis for conducting future reviews of allowance rates. As noted in § 591.205(d) of the final rule, OPM fully intends to go through another round of rule-making in which we will describe the details of a particular year's living cost survey and the proposed rates that result from it. We expect to repeat this process each time we propose to adjust allowance rates.

Some commenters remarked, especially with respect to § 591.205, that the regulations should be expressed in simpler language which can better be understood by the individuals directly affected by the COLA program. In addition to clarifying several specific points in response to comments, we have reworded portions of § 591.205 in response to these concerns.

One employee commended OPM for establishing different allowance rates for employees with commissary and exchange privileges and those shopping at retail outlets.

Comments on COLA Methodology. Several commenters expressed concern that the proposed rule would not actually measure relative living costs, but would merely measure how individuals allocate their budgets. This comment reflects an interpretation of the term "budget" which OPM did not intend. We have revised § 591.205 to eliminate the term "budget," and to emphasize that OPM will first determine the cost of an appropriate market basket

of goods, services, and other expense categories in the Washington, DC area, and then measure the cost of the same market basket in the allowance area. This method will measure actual differences in the cost of living by calculating the additional income employees would need to purchase the contents of the market basket in the higher-cost area.

Several commenters also expressed concern that weighting the "budgets" for each location to reflect the distribution of General Schedule (GS) grades in the location (§ 591.205(c)) will unfairly disadvantage employees in the allowance areas, since GS grades tend, on average, to be higher in the Washington, DC area. OPM is adopting a weighting method specifically designed to eliminate any potential disadvantage to employees in allowance areas where the average GS grade is lower than in the Washington, DC area. Section 591.205(c) of the final rule has been clarified to show that the weighting of both the Washington, DC dollar amounts and the allowance area dollar amounts will be based on the GS distribution in the allowance area, thereby insuring that the higher average GS grade in the Washington, DC area does not affect the calculation of the allowance rate.

Several commenters argued that defining an allowance area as a 50-mile radius around certain Alaskan cities was unrealistic because (1) housing costs are sharply lower 30 to 40 miles outside major cities; (2) few persons commute or routinely travel as much as 50 miles due to harsh conditions and poor road systems; and (3) reaching a point within 50 miles of a city such as Anchorage may require an automobile trip of up to 180 miles. Interested parties should note that the standard established by the final rule is a 50-mile distance by road. We continue to believe that the 50-mile-by-road standard represents an appropriate definition of an economic community.

One individual suggested incorporating allowances paid by private sector employers into the calculation of allowance rates for Federal employees. Another commenter recommended delaying possible reductions in allowance rates until Federal employees attain pay comparability with private sector employees. These suggestions can not be adopted since the statute bases the calculation of the cost-of-living allowance only on differences in living costs.

Definitions. One individual asked OPM to provide the specific jurisdictions included in the definition of the Washington, DC area. As currently defined by the Office of Management and Budget, the Washington, DC–MD–VA Metropolitan Statistical Area includes: the District of Columbia; the following counties in Maryland: Montgomery, Prince Georges, Frederick, Charles, and Calvert; and the following areas of Virginia: the cities of Fairfax, Falls Church, Manassas, Manassas Park, and Alexandria, and the counties of Arlington, Fairfax, Loudoun, Stafford, and Prince William.

Several commenters asked OPM to limit cost of living measurements to the city limits of Washington, DC. Such a limitation would (1) conflict with a provision of Executive Order 10,000, as amended, specifying the "Washington, DC area" as the basis for comparison, and (2) disregard the fact that many Federal employees working in agencies located in Washington, DC live and shop in the neighboring areas of Maryland and Virginia.

One commenter suggested that the proposed definitions of the terms "date of arrival" and "date of departure" in § 591.201 would be difficult to administer since most agencies prefer to begin and end payment of allowances or differentials at the beginning or end of a pay period, respectively. The commenter also believed that a requirement to determine employees' precise dates of arrival and departure would be administratively cumbersome and nonproductive, and recommended (1) beginning payment at the start of the employee's first pay period in duty status in the allowance or differential area; and (2) ending payment at the end of the employee's last pay period in duty status in the allowance or differential area. We do not believe that it would be appropriate to authorize payment of an allowance or differential for any portion of a pay period preceding an employee's arrival in the nonforeign area or after the employee's departure from the nonforeign area. However, we have revised the definitions of "date of arrival" and "date of departure" to correspond with the first and last days, respectively, that the employee is in a pay status in the allowance or differential area. The information needed to determine an employee's date of arrival or departure should be readily available in the agency's records. We have also defined the term "differential area" to parallel the definition of "allowance area," and to simplify the definitions of "date of arrival" and "date of departure."

The same commenter stated that the proposed rule should be revised to specifically state that certain employees appointed to the Stay-in-School program under the authority of 5 CFR 213.3102(w) are eligible to receive allowances or differentials. We agree, and have clarified § 591.203 accordingly. We also have clarified § 591.203 by adding a paragraph authorizing agencies to apply this final rule, at their discretion, to certain groups of employees whose rates of basic pay are established at the administrative discretion of the head of the agency.

The same commenter also asked OPM to specify when allowances and differentials are to be included in a lump sum payment for annual leave. We agree, and have modified § 591.210(b)(1) to specifically address this issue.

A few commenters asked for a specific definition of the term "appropriate," which appears several times in the final rule. We have used the term "appropriate" in recognition of the fact, noted by several commenters, that an approach suitable for one area may be unsuitable for another area. We believe it is desirable to preserve some flexibility to tailor the details of a given survey to specific conditions to ensure that we can respond effectively to changes and local variations in economic conditions. As noted above, interested parties will have an opportunity to comment on the appropriateness of specific sources of data before future allowance rates, based on such data, are finalized.

Consumption Goods and Services. Many commenters supported the use of same-brand pricing, and several individuals asked OPM to employ same-brand pricing in all cases. The regulations commit OPM to same-brand pricing whenever possible. However, if exact brands cannot be compared for a specific item, we believe it would be preferable to price the closest brands available, rather than altogether excluding a relevant item from the survey.

Transportation. Several individuals commented that the costs of auto insurance are significantly higher in allowance areas than in the Washington, DC area. Several commenters noted that severe weather conditions in allowance areas may accelerate deterioration of automobiles. To the extent that such factors result in increased automobile operating expenses, they will be reflected in transportation cost data gathered under § 591.205(b)(2).

One commenter suggested including costs resulting from a lack of public transportation. To the extent that a lack of public transportation results in a greater average number of automobile miles driven, such additional costs will

be reflected in the Transportation expense category.

Housing. One individual commended OPM for including home purchase prices and mortgage interest rates in calculating housing costs.

Many commenters were concerned that depressed housing prices in Alaska would artificially lower allowance rates. The commenters believe that many employees in allowance areas purchased homes during periods when housing prices were substantially higher than they are today, and that sole consideration of current housing prices would be inappropriate since employees who purchased homes during boom periods are locked into higher mortgage payments based on prices and interest rates available at the time of purchase and are unable to take advantage of current levels of housing prices.

Some of these concerns may have resulted from a typographical error in the proposed rule. OPM had written in the supplementary material for the proposal rule that "the purchase price and interest rate, two important factors in home ownership costs, are very dependent on the time of purchase." When the proposal was published, however, the text read "very independent." We have revised § 591.205(b)(3) to indicate that we fully intend to consider both current and prior dates for home purchase in measuring living costs. Because this mix reflects the average of what consumers actually pay, it is a more accurate measure of living costs than current market prices, which only affect those currently purchasing housing. However, it is not reasonable to completely ignore current market prices when prices have been dropping, since the current market affects the living costs of employees who have recently purchased housing.

One individual suggested that OPM calculate housing costs based on data from the Department of Housing and Urban Development (HUD), rather than conduct surveys in the allowance area. The final rule gives OPM the flexibility to use data from HUD or other knowledgeable agencies, and we will consider the possibility of doing so. If HUD data is used as a tool to help determine specific allowance rates, that fact will be published for comment, as noted above, before any adjustments in allowance rates are finalized.

Another individual suggested using certain indices of construction and labor costs. Although these indices measure costs which have some impact on the cost of living, we believe it will be more accurate to directly measure the cost of living through the methodology provided in the final rule.

Several individuals suggested that OPM continue to use surveys of individual employee costs to calculate housing expenses instead of collecting data from market sources about housing units independent of the employment of the occupant. We believe that the quality and quantity-specific methodology of the final rule results in an improved method of measuring differences in living costs.

Several commenters asked OPM to include real estate taxes because they are expecially high in Alaska. Section 591.205(b)(3) of the final rule indicates that real estate taxes will be included in the measurement of housing costs.

One commenter supported the proposal to compare similar housing units between areas, but recommended holding constant factors such as neighborhood/location, commuting distance, age of dwelling, quality of dwelling, rural vs. urban setting, quality of schools, etc. There is a practical limit to the number of control variables that can be used in any comparison of housing costs. We believe that selecting standard shelter specifications based on type, size, and age of dwelling definitions and selecting living communities based on the expert opinion of housing professionals in each location will ensure a reasonable, accurate, and fair comparison of housing costs.

Some commenters believe OPM should authorize different allowance rates for employees based on the actual date they purchased their dwelling. One implication of such an approach would be a different allowance rate for each employee based on his or her particular circumstances and characteristics. Performing individual calculations of living costs for each of thousands of employees is neither feasible nor desirable.

Miscellaneous Expenses. One individual asked OPM to include the cost of health care in its measurements of living costs. Several individuals indicated that employees in remote areas may incur unusually high travel expenses, such as the need to charter an airplane, to obtain emergency medical or dental care. Other commenters indicated that the costs of medical services in allowance areas are often so high that health insurance plans that typically provide reimbursement based on "customary and reasonable" charges often reimburse a much smaller portion of actual expenses in allowance areas than in the Washington, DC area. Health care costs are one of the fastest growing components of living costs, and we agree that it is appropriate to incorporate them in the living cost comparison. We have therefore included specific mention of health care costs in the list of miscellaneous expenses in § 591.205(b)(4).

Many individuals, as well as the attorneys for several employee groups, commented that the proposed rule fails to consider differential needs—i.e., the cost of goods and services which are needed in the allowance areas, but are not normally needed in the Washington, DC area (such as the cost of flying to and from the lower 48 states to attend college, take a vacation, or visit friends and relatives, 4-wheel drive vehicles, and engine block heaters), as well as the cost of certain goods and services which may be needed in greater quantities in certain allowance areas (such as fuel oil, automobile tires, automobile maintenance and repair, and heavy winter clothing). While we understand the commenters' concerns, we do not believe it is necessary to isolate and compare every location-specific difference in items purchased in order to fairly and accurately calculate differences in the cost of living. However, interested parties should note that, in some cases, differences in needs are inseparable from the basic measurement of the cost of an item, and will therefore affect the calculation of allowance rates under the final rule. For example, in an allowance area where automobiles are routinely equipped with engine block heaters, the additional cost of purchasing such heaters will be reflected in the survey of transportation costs.

Several individuals, as well as the attorneys for employee groups, also commented that the proposed rule fails to consider "non-economic costs" incurred in allowance areas, such as a limited selection of consumer items, separation from family and native culture, and a perceived inferior overall quality of living. Several commenters recommended that an additional 5 per cent be added to each allowance rate to compensate for differential needs and additional "non-economic costs". We do not believe that the statute guarantees equal standards of living in the allowance areas and the Washington, DC area. Rather, it authorizes payment of an allowance to compensate employees for the higher cost of living in the allowance area. OPM does not believe that adding 5 per cent to the calculated allowance rates based on unsupported conjecture would be consistent with the requirement in Executive Order 10,000, as amended, to insure that allowance rates "shall not in any instance exceed the amount justified."

Other Comments on Allowances. Several individuals asked OPM to use a lower-cost area than the Washington, DC area as the basis for comparing living costs in the allowance areas. We can not adopt this suggestion because the statute and Executive Order specify Washington, DC as the area whose living costs must be compared with living costs in the allowance areas.

Several commenters asked OPM to implement any possible changes in allowance rates gradually. Some commenters also asked OPM to specify by regulation the maximum percentage by which an allowance rate could decrease in a one-year period—e.g., limit decreases to 2.5 per cent per year. Whenever an allowance rate is substantially reduced due to program or methodology revisions, OPM will implement the reduction gradually, in accordance with section 210 of Executive Order 10,000, as amended. However, we do not believe it would be appropriate to adopt a fixed percentage of reduction without considering the specific circumstances surrounding the rate reduction, such as prevailing economic conditions and the amount of the reduction. Interested parties will have an opportunity to comment on any reduction in an allowance rate before the rate is finalized.

A Federal executive association and a member of Congress asked OPM to adopt a "credit bank" approach under which any excess in a calculated allowance rate above the maximum payable rate of 25 per cent of basic pay would be held in abeyance for offset against any future reductions in allowance rates below the 25 per cent maximum. This suggestion can not be adopted as it would conflict with the requirement, mandated by Executive Order 10,000, as amended, to conduct periodic reviews to ensure that allowance rates "shall continue only during the continuance of conditions justifying such payment."

The attorneys for several employee groups recommended revising § 591.210(e)(1) to include allowances in the calculation of the rate of overtime pay for employees exempt from the provisions of the Fair Labor Standards Act (FLSA). OPM can not adopt this recommendation since, by law, the rate of overtime pay for exempt employees is derived from their rate of basic pay. Cost of living allowances are paid in addition to an employee's rate of basic pay (which is fixed by statute), and are therefore not includable in the calculation of an exempt employee's rate of overtime pay. Because an allowance is considered part of a nonexempt employee's "total remuneration," the allowance rate must be included in a non-exempt employee's regular rate of pay for computing overtime pay entitlement under the FLSA.

One individual suggested that (1) any future reductions in allowance rates only be applied to new employees, and (2) implementation of any future reductions in allowance rates be delayed for at least two years. OPM can not adopt these suggestions since Executive Order 10,000 requires OPM to ensure that employees do not receive higher allowance rates than would be justified by current conditions.

Two commenters argued that OPM's Regulatory Flexibility Act certification was inappropriate, and that the proposed rule would have a significant economic impact on a substantial number of small entities. We disagree, for three reasons. First, the proposed rule deals only with allowances and differentials paid to Federal employees, and places no restrictions or requirements on small entities. Second, there is no indication that the changes in methodology we are adopting will significantly affect the amounts of allowances or differentials paid to Federal employees. Third, the allowance program has been in operation for many years, and although there have been occasional reductions in allowance rates, we have received no indication that such reductions have had a significant economic impact on small entities.

Post Differential. A Federal executive association and an employee suggested that OPM extend authority to pay post differentials to employees in all areas of Alaska. Since employees in the nonurban areas of Alaska are already receiving the maximum allowance rate permitted by law (25 per cent), current law does not permit these employees to also receive a post differential.

An employee asked whether eligibility for a post differential is limited to employees who have moved into a differential area to compensate for work force shortages. An employee who has not been recruited or transferred from outside the differential area may receive a post differential under certain circumstances, as provided in § 591.209 of the final rule.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply to Federal employees and agencies.

List of Subjects in 5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is revising subpart B, with the exception of the appendix, of part 591 of title 5, Code of Federal Regulations, to read as follows:

PART 591—ALLOWANCES AND DIFFERENTIALS

* * * * *

Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

Sec.

* * * * *

Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

Authority: 5 U.S.C. 5941; E.O. 10,000; 3 CFR, 1943–1948 Comp., p. 792; E.O. 12,510; 3 CFR, 1985 Comp., p. 338.

§ 591.201 Definitions.

In this subpart—

Allowance area means a geographic area for which an allowance has been authorized. There may be more than one allowance area within a nonforeign area. Allowance areas are listed in § 591.204 of this part.

Date of arrival means the employee's first day in a pay status in the allowance or differential area.

Date of departure means the employee's last day in a pay status in the allowance or differential area.

Day or *calendar day* means any day of the year. Fractional days are considered whole days.

Differential area means a geographic area for which a post differential has been authorized. Differential areas are listed in § 591.208 of this part.

Nonforeign allowance or *allowance* means a cost-of-living allowance

established by the Office of Personnel Management and payable under section 5941 of title 5, United States Code, at a location in a nonforeign area where living costs are substantially higher than those in the Washington, DC, area.

Nonforeign area means the States of Alaska and Hawaii, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, territories and possessions of the United States, and any additional areas located outside the contiguous United States that the Secretary of State designates as being within the scope of Part II of Executive Order 10,000, as amended. Nonforeign areas are listed in § 591.202 of this part.

Nonforeign differential or *differential* means a post differential established by the Office of Personnel Management and payable under section 5941 of title 5, United States Code, at a location in a nonforeign area if conditions of environment differ substantially from conditions of environment in the contiguous United States and warrant its payment as a recruitment incentive.

Rate of basic pay means the rate of pay fixed by statute for the position held by an individual before any deductions and exclusive of additional pay of any kind, such as overtime pay, night differential, extra pay for work on holidays, or allowances and differentials.

Washington, DC, area or *Washington area* means the District of Columbia and all other areas in Maryland and Virginia included in the Washington DC–MD–VA Metropolitan Statistical Area as defined by the Office of Management and Budget.

§ 591.202 Areas covered.

The following areas are nonforeign areas:

(a) Alaska (including all the Aleutian islands east of longitude 167 degrees east of Greenwich).

(b) American Samoa (including the island of Tutuila, the Manua Islands, and all other islands of the Samoa group east of longitude 171 degrees west of Greenwich, together with Swains Island).

(c) Canton and Enderbury Islands.

(d) Commonwealth of Puerto Rico.

(e) Virgin Islands of the United States.

(f) Guam.

(g) Commonwealth of the Northern Mariana Islands.

(h) Hawaii (including Ocean or Kure Island).

(i) Howland, Baker, and Jarvis Islands.

(j) Johnston Island and Sand Island.

(k) Kingman Reef.

(l) Midway Islands.

(m) Navassaa Island.

(n) Palmyra Atoll.

(o) Wake Island.

(p) Any small guano islands, rocks, or keys that, in pursuance of action taken under the Act of Congress, August 18, 1856, are considered as appertaining to the United States.

(q) Any other islands to which the U.S. Government reserves claim, such as Christmas Island.

§ 591.203 Agencies and employees covered.

(a) This subpart applies to civilian employees whose rates of basic pay are fixed by statute and who are employed by an executive department, an independent establishment, or a wholly-owned Government corporation. The following pay plans are covered by this subpart:

(1) General Schedule (including the Performance Management and Recognition System, the Senior Executive Service, and employees in positions authorized by 5 CFR 213.3102(w) whose rates of basic pay are established under the General Schedule).

(2) Veterans Health Services and Research Administration (Department of Veterans Affairs).

(3) Foreign Service (where applicable under this subpart).

(4) Postal Service (where applicable under provisions of 39 U.S.C.).

(b) This subpart may be applied, at the sole discretion of the employing agency, to civilian employees in positions authorized by 5 CFR 213.3102 (v) or (w) whose rates of basic pay are not established under the General Schedule or under the Federal Wage System.

§ 591.204 Establishment of allowance areas.

(a) The Office of Personnel Management (OPM) designates within nonforeign areas allowance areas where employees are eligible to receive a cost-of-living allowance by virtue of living costs that are substantially higher than those in the Washington, DC, area. In establishing the limits of allowance areas, OPM considers:

(1) The existence of a well defined economic community;

(2) The availability of consumer goods and services;

(3) The concentration of Federal employees covered by this supart; and

(4) Unique circumstances related to a specific location.

(b) The following allowance areas have been established where an allowance is authorized to be paid:

(1) *State of Hawaii.* (i) City and County of Honolulu.

(ii) County of Kauai.

(iii) County of Maui (including Kalawao County).

(iv) County of Hawaii.

(2) *State of Alaska.* (i) City of Anchorage and 50 mile radius by road.

(ii) City of Fairbanks and 50 mile radius by road.

(iii) City of Juneau and 50 mile radius by road.

(iv) The rest of the State.

(3) *Commonwealth of Puerto Rico.* The entire Commonwealth.

(4) *The Virgin Islands.* (i) St. Croix.

(ii) St. Thomas and St. John.

(5) *Territory of Guam.* The entire Territory.

(c) The head of a department or agency will submit requests in writing to OPM for the establishment or revision of allowance areas.

§ 591.205 Comparative cost index.

(a) OPM calculates allowance rates for each area by comparing costs of four categories of expenses in the area to those in the Washington, DC area. Two allowance rates are calculated for each area; Local Retail and Commissary/Exchange (see § 591.207 of this part). The four categories of expenses are:

(1) Consumption goods and services.

(2) Transportation.

(3) Housing.

(4) Miscellaneous expenses.

(b) Costs are determined for several income levels and home occupancy types (renter or owner), and averaged.

(1) The cost of consumption goods and services (excluding transportation and housing) will be estimated from appropriate consumer expenditure data at several income levels for a standard family size. The cost of goods and services in the Washington, DC area will be adjusted by a price index reflecting the estimated price difference between the allowance area and the Washington, DC area.

(i) Goods and services surveyed. The types and amounts of consumption goods and services to be surveyed at each income level will be derived from appropriate consumer expenditure surveys. Whenever possible, exact brands and models are priced in each location. Price data are obtained from appropriate retail outlets in each area. Price data from military facilities are provided by the Department of Defense where needed. Individual items are grouped into categories according to common functions or uses.

(ii) The item and category weights are derived from consumer expenditure surveys. The category weights vary by income.

(2) Transportation costs for each income level and area are estimated using data collected by or for OPM on automobile operating expenses and other factors affecting transportation costs.

(3) Housing costs for renters and owners are estimated based on similar housing units. Standard shelter specifications (type, size, age) are selected for each income level. Appropriate living communities to survey based on the income level and housing type specified are selected for each survey location. Housing data on units within the selected communities meeting the specifications are then collected for newly purchased and previously purchased units. Mortgage interest rate and payment data are collected from lending institutions in the area, utility companies and other sources provide information about utility rates, and local governments provide information on real estate tax rates. These data are then combined to estimate dollar expenditures within each survey area for the specified shelter in the selected community.

(4) Miscellaneous expenses. Miscellaneous expenses for health care, gifts, contributions, savings and investments, retirement, and life insurance are estimated from consumer expenditure surveys and other data appropriate for Federal employee for each income level.

(c) The dollar amounts estimated for consumption, transportation, housing, and miscellaneous expenses are combined to produce a total dollar amount for renters and a total dollar amount for home owners at each income level. The dollar amounts for renters are combined with the dollar amounts for home owners for each income level by using weights, derived from appropriate consumer expenditure or census data, representing the proportion of renters and owners at each income level. The dollar amounts for each income level are weighted into one average amount to reflect the GS grade distribution for the allowance area. The average allowance area dollar amount is divided by the average Washington, DC, area dollar amount to generate a comparative cost index. The allowance rate for the area is based upon the index.

(d) OPM will describe in detail the calculation of each allowance rate at the time the rate is published in the **Federal Register** for comment.

§ 591.206 Establishment of allowance rates.

(a) OPM uses the comparative cost indexes for each allowance area to determine the allowance rates for that area. The range of values within which the index value falls determines the appropriate allowance rate, expressed as a percentage of the rate of basic pay for that category of eligible employee.

(b) The following table shows the comparative index range and corresponding allowance rate to be established for an allowance category under § 591.207 of this part:

COMPARATIVE INDEX AND ALLOWANCE RATE TABLE

Index range	Allowance rate (percent)
Less than 105.0	0
105.0 to 106.2	5
106.3 to 108.7	7.5
108.8 to 111.2	10
111.3 to 113.7	12.5
113.8 to 116.2	15
116.3 to 118.7	17.5
118.8 to 121.2	20
121.3 to 123.7	22.5
123.8 and over	25

(c) Allowance area survey summaries, category indexes, and allowance rates are published as notices in the **Federal Register.**

§ 591.207 Allowance categories, eligibility, and adjustments.

(a) Section 205(b) of Executive Order 10,000, as amended, requires adjustments to allowance payments where warranted because of Federal quarters or special purchasing privileges. These adjustments occur only when the quarters or purchasing privileges are made available as a result of Federal civilian employment and result in substantially lower costs when compared to local area costs.

(1) Special purchasing privileges. Adjustments for access to commissaries and exchanges are incorporated into the comparative index calculations and the resulting allowance rates.

(2) Federal quarters. If the rent charged an employee by an agency for quarters is less than the net reasonable value rent, after appropriate adjustments, established as prescribed by the Office of Management and Budget, the difference between the rent charged and the reasonable value rent will be deducted from the allowance paid by the employing agency up to, but not exceeding, the amount of the allowance.

(b) The allowance categories that are established in each area are—

(1) "Local Retail," which applies to those Federal employees who purchase goods and services from private retail establishments.

(2) "Commissary/Exchange," which applies to those Federal employees who shop at private retail establishments, but who, as a result of their Federal civilian employment, also have unlimited access to commissary and exchange facilities. This category is established only in those allowance areas that have these facilities.

(c) Eligibility for access to commissary and exchange facilities is determined by the appropriate military department. Agencies shall obtain the information needed from employees to determine the applicable allowance category.

§ 591.208 Post differential.

(a) The post differential is based on:

(1) Extraordinarily difficult living conditions;

(2) Excessive physical hardship; or

(3) Notably unhealthful conditions.

(b) The places at which differentials are paid are—

(1) American Samoa (including the island of Tutuila, the Manua Islands, and all other islands of the Samoa group east of longitude 171 degrees west of Greenwich, together with Swains Island).

(2) Canton and Enderbury Islands.

(3) Guam.

(4) The Commonwealth of the Northern Mariana Islands.

(5) Johnston Island and Sand Island.

(6) Midway Islands and Wake Island.

(7) Christmas Island.

(c) New or revised post differential rates are published as notices in the **Federal Register.**

§ 591.209 Eligibility for a differential.

A department or agency will determine employee eligibility to receive a differential as follows:

(a) To be eligible to receive a differential:

(1) The employee must be a citizen or national of the United States;

(2) The employee's residence in the area where the differential applies must be attributable to employment by the United States; and

(3) Any prior residence in the area must be because of employment by the United States or by U.S. firms, interests, or organizations.

(b) Subject to paragraph (a) of this section, the classes of persons eligible to receive differentials include, but are not limited to—

(1) Those recruited or transferred from outside the area where the differential applies.

(2) Those employed in the area where the differential applies but who—

(i) Were originally recruited from outside the area and have been in

substantially continuous employment by other Federal agencies, contractors of Federal agencies, or international organizations in which the U.S. Government participates, and whose conditions of employment provide for their return transportation to places outside the differential area concerned; or

(ii) Were at the time of employment temporarily present in the differential area concerned for travel or formal study and maintained residence outside the area during that period.

(3) Those who are not normally residents of the area where the differential applies and who are discharged from the military service of the United States in the area to accept employment there with an agency of the Federal Government.

§ 591.210 Payment of allowances and differentials.

(a) Allowances and differentials under this subpart are payable to an employee whose permanent duty station is in a nonforeign area for which an allowance or differential is authorized.

(b)(1) Except as provided in paragraph (b)(2) of this section, allowances and differentials are calculated and paid as a percentage of an employee's hourly rate of basic pay for those hours for which the employee receives basic pay, including all periods of paid leave, detail, or travel status outside the allowance or differential area. Allowances and differentials are included in any lump-sum payment for accumulated and current accrued annual leave issued under sections 5551 or 5552 of title 5, United States Code, to an employee who separates while in a duty status in the allowance or differential area.

(2) Payment of a differential during periods of paid leave or travel outside the differential area continues for the first 42 consecutive calendar days of the absence. Payment of allowances and differentials while absent from the post continues only if the employee returns to duty status in the area, unless the agency determines that—

(i) It is in the public interest not to return the employee to the duty station; or

(ii) The employee's failure to return to the duty station was due to compelling personal reasons or to circumstances over which the employee had no control.

(c) An employee assigned to a duty station for which both an allowance and a differential are authorized under this subpart and eligible for both will receive the full amount of the allowance, plus so much of the differential as will not cause the combined total of allowance and differential to exceed 25 percent of the hourly rate of basic pay.

(d) If an employee who is receiving an allowance or differential or both under this subpart is temporarily assigned to a duty station in a foreign area and is eligible to receive a foreign post differential authorized by the Department of State under 5 U.S.C. 5925, the employee will receive the foreign area differential, plus so much of the allowance and/or differential (in that order) authorized under this subpart as will not cause the combined total to exceed 25 percent of the hourly rate of basic pay.

(e)(1) An allowance or a differential is not part of an employee's rate of basic pay for the purpose of computing entitlements to overtime pay, retirement, life insurance, or any other additional pay, allowance, or differential under title 5, United States Code.

(2) An allowance or differential is included in an employee's regular rate of pay for computing overtime pay entitlement under the Fair Labor Standards Act of 1938, as amended.

(f) Payment of an allowance or a differential is not an equivalent increase in pay within the meaning of 5 U.S.C. 5335.

(g) Payment of an allowance or differential will begin as of the date of arrival on regular assignment or transfer, or on the date of entrance on duty in the case of local recruitment. Payment of an allowance or differential will cease on separation, or as of the date of departure on transfer to a new post of regular assignment.

§ 591.211 Periodic review.

In accordance with Executive Order 10,000, OPM reviews from time to time, but at least annually, the places designated, the rates fixed, and the regulations in this subpart that are prescribed for payment of allowances and differentials. This review is to make warranted changes to ensure that payments under this subpart will continue only during the continuance of conditions justifying payment of allowances and differentials and will not in any instance exceed the amount justified. However, if program or methodology revisions would substantially reduce an established differential or allowance rate, then the rate of such additional compensation may be reduced gradually.

[FR Doc. 90-906 Filed 1-12-90; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 215, 225, 226, and 235

[Amdt. Nos. 37, 2, 22, and 17, respectively]

Renaming of Child Care Food Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: The Food and Nutrition Service (FNS) is amending the regulations for the Special Milk Program, Summer Food Service Program, Child Care Food Program (CCFP) and State Administrative Expense Funds to change the title of the CCFP to the "Child and Adult Care Food Program" (CACFP). This change is mandated by the Child Nutrition and WIC Reauthorization Act of 1989, Pub. L. 101-147, which was enacted on November 10, 1989. With the enactment of the Older Americans Act Amendments of 1987, certain adult day care centers that care for chronically impaired adults or persons 60 years of age or older became eligible to receive cash and commodity assistance under the CCFP. Adding the word "Adult" to the Program title helps recognize participation by those centers.

EFFECTIVE DATE: November 10, 1989.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie or James C. O'Donnell, Child Nutrition Division, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Room 509, Alexandria, Virginia 22302, or by telephone at (703) 756-3620.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has been classified not major because it will not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, or Federal, State or local government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). Pursuant to that review, the Acting Administrator of the Food and Nutrition Service has certified that this final rule

does not have a significant economic impact on a substantial number of small entities.

No new reporting or recordkeeping requirements are included which would require Office of Management and Budget approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

This rule implements section 105(a) of Public Law 101-147, a nondiscretionary provision that changes the title of the Child Care Food Program under section 17 of the National School Lunch Act (42 U.S.C. 1766) to the "Child and Adult Care Food Program". This provision is effective with the enactment of Public Law 101-147, on November 10, 1989. Given the nondiscretionary nature of this provision and the fact that it is effective upon enactment of Public Law 101-147, the Department believes it to be in the best interest of CCFP administrators, to publish this rule as a final regulation to expedite an orderly revision of Program related materials. Because of the nondiscretionary, interpretive nature of this rule, G. Scott Dunn, the Acting Administrator of the Food and Nutrition Service, has determined that prior notice and comment and a 30-day post-publication waiting period are not required in accordance with 5 U.S.C. 553(b)(3)(A) and 553(d)(2).

State Administrative Expense Funds, Special Milk, Summer Food Service, and Child and Adult Care Food Programs are listed in the Catalog of Federal Domestic Assistance under Nos. 10.560, 10.556, 10.559, and 10.558 respectively and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule-related notice published at 48 FR 29115, June 24, 1983).

Background

The Older Americans Act (OAA) Amendments of 1987 (Pub. L. 100-175), which was enacted on November 29, 1987, amended section 17 of the National School Lunch Act by extending eligibility for CCFP cash and commodity assistance to adult day care centers. Eligible centers must provide adult day care services on a less than 24-hour basis to chronically impaired disabled adults or persons 60 years of age or older. On December 28, 1988, the Department published an Interim Rule with request for comments on the Adult Day Care Provision at 53 FR 52584. As indicated in the preamble to those regulations, these adult day care centers and the individuals they serve are eligible for the CCFP in essentially the same manner and under the same terms and conditions as eligible child care centers. Where differences exist, particularly those established in the OAA Amendments and the Hunger Prevention Act of 1988 (Pub. L. 100-460), they are reflected in current Program regulations.

Notwithstanding the above, Congress has determined that it is appropriate and useful to give recognition to the fact that there are clear differences between adult centers and child care centers, and that adult day care centers are to participate fully in the CCFP. Accordingly, section 105(a) of Public Law 101-147, the Child Nutrition and WIC Reauthorization Act of 1989, enacted on November 10, 1989, amended section 17 of the National School Lunch Act (42 U.S.C. 1766) by changing the heading of section 17 from "Child Care Food Program" to "Child and Adult Care Food Program", thus renaming the Program and necessitating these regulatory changes.

List of Subjects

7 CFR Part 215

Food assistance programs, Special Milk Program, Grant Programs—Social programs, Nutrition, Children, Milk, Reporting and recordkeeping requirements.

7 CFR Part 225

Food assistance programs, Grant programs—Health, Infants, Children.

7 CFR Part 226

Day care, Food assistance programs, Grant programs—Health, infants and children. Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 235

Food assistance programs, National School Lunch Program, School Breakfast Program, Special Milk Program, Grants administration, Intergovernmental relations, Reporting and recordkeeping requirements, Administrative practice and procedure.

Accordingly, parts 215, 225, 226, and 235 are amended as follows:

PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

1. The authority citation for part 215 is amended to read as follows:

Authority: Secs. 3, 10, Child Nutrition Act of 1966, as amended (42 U.S.C. 1772, 1779).

§ 215.2 [Amended]

2. In § 215.2:

a. Paragraph (d) is amended by removing the words "Child Care Food Program" and adding "Child and Adult Care Food Program" in their place.

b. Paragraph (e) is amended by removing the words "Child Care Food Program" and adding "Child and Adult Care Food Program" in their place.

PART 225—SUMMER FOOD SERVICE PROGRAM

1. The authority citation for part 225 continues to read as follows:

Authority: Secs. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761, and 1762a).

§ 225.16 [Amended]

2. In § 225.16, the third sentence of paragraph (f)(2) is amended by removing the words "Child Care Food Program" and adding "Child and Adult Care Food Program" in their place.

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

1. The authority citation for part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

2. In part 226, the part title is revised as set forth above.

§ 226.1 [Amended]

3. In § 226.1, the first sentence of the paragraph is amended by removing the words "Child Care Food Program" and adding "Child and Adult Care Food Program" in their place

4. In § 226.2, the definitions of "CCFP child care standards" and "Program" are revised to read as follows:

§ 226.2 Definitions.

* * * * *

CACFP child care standards means the Child and Adult Care Food Program child care standards developed by the Department for alternate approval of child care centers, outside-school-hours care centers, and dare care homes by the State agency under the provisions of § 226.6(d) (2) and (3)

* * * * *

Program means the Child and Adult Care Food Program authorized by Section 17 of the National School Lunch Act, as amended.

* * * * *

§ 226.6 [Amended]

5. In § 226.6:

a. Paragraph (d)(1)(i) is amended by removing the words "Child Care Food".

b. Paragraph (d)(1)(v) is amended by removing the acronym "CCFP" and adding "CACFP" in its place.

c. The heading to paragraph (d)(2) and the intoductory text of (d)(2)(i) are amended by removing the acronym "CCFP" each time it appears and adding "CACFP" in its place, and (d)(2)(i)(I) is amended by removing the acronym "CCFP" and adding "CACFP" in its place.

d. The third and fourth sentences of paragraph (d)(3) are amended by removing the acronym "CCFP" each time it appears and adding "CACFP" in its place.

e. Paragraph (e)(1) is amended by removing the words "Child Care Food".

§ 226.7 [Amended]

6. In 226.7, the first sentence of paragraph (d) is amended by removing the words "a final report of Child Care Food Program Operations (FNS 44)" and adding "the final Report of the Child and Adult Care Food Program (FNS 44)" in their place.

§ 226.8 [Amended]

7. In § 226.8, paragraph (b) is amended by removing the acronym "CCFP" each time it appears and adding "CACFP" in its place.

§ 226.9 [Amended]

8. In § 226.9, the introductory text of paragraph (c) is amended by removing the acronym "CCFP" and adding the word "Program" in its place.

§ 226.10 [Amended]

9. In § 226.10:

a. The first sentence of paragraph (c) is amended by removing the words "Reports of Child Care Food Program Operations" and adding "the final Report of the Child and Adult Care Food Program (FNS 44)" in their place.

b. The sixth sentence of paragraph (e) is amended by removing the words "Child Care Food Program Operations (FNS 44)" and adding "the Child and Adult Care Food Programs (FNS 44)" in their place.

§ 226.15 [Amended]

10. In § 226.15, paragraph (i) is amended by removing the words "Child Care Food Program" and adding "Child and Adult Care Food Program" in their place.

§ 226.17 [Amended]

11. In § 226.17, paragraph (b)(1)(ii) is amended by removing "CCFP Child Care Standards" and adding "CACFP child care standards" in their place.

§ 226.18 [Amended]

12. In § 226.18, paragraph (a)(2) is amended by removing the acronym "CCFP" and adding "CACFP" in its place.

§ 226.19 [Amended]

13. In § 226.19, paragraph (b)(1)(ii) is amended by removing the acronym "CCFP"and adding "CACFP" in its place.

§ 226.19a [Amended]

14. In § 226.19a, the second sentence of paragraph (b)(6) is amended by removing the acronym "CCFP" and adding "CACFP" in its place.

§ 226.23 [Amended]

15. In § 226.23, paragraphs (e)(1)(i), (e)(1)(ii)(F), and (h)(2)(iv)(C) are amended by removing the acronym "CCFP" each time it appears and adding "Program" in its place.

PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS

1. The authority citation for part 235 is amended to read as follows:

Authority: Secs. 7 and 10, Child Nutrition Act of 1966, as amended (42 U.S.C. 1776, 1779).

§ 235.1 [Amended]

2. In § 235.1, the second sentence is amended by removing the words "Child Care Food Program" and adding "Child and Adult Care Food Program" in their place.

§ 235.2 [Amended]

3. In § 235.2, paragraph (i) is amended by adding the words "or adult" after the word "child".

4. In § 235.4:

a. The introductory text of paragraphs (b) and (b)(1) are amended by removing the words "Child Care Food Program" and adding "Child and Adult Care Food Program" in their place each time they appear.

b. Paragraph (b)(4) is amended by removing the words "Child Care Food Program" and adding "Child and Adult Care Food Program" in their place and the last sentence of paragraph (b)(4) is revised.

c. Paragraph (c) is amended by removing the words "child care institutions" and adding "child and adult care institutions" in their place.

The revision specified above reads as follows:

§ 235.4 Allocation of funds to States.

* * * * *

(b) * * *

(4) * * * The amount of funds to be allocated to each State agency administering the Child and Adult Care Food Program for any fiscal year shall bear the same ratio to the total amount of funds made available for allocations to all such State agencies under this paragraph as the amount of funds allocated to the State agencies administering the Child and Adult Care Food Program under paragraph (b) of this section bears to the amount allocated to all such State agencies under that paragraph.

* * * * *

§ 235.5 [Amended]

5. In § 235.5:

a. Paragraph (b)(1) is amended by removing the words "Child Care Food Program" and adding "Child and Adult Care Food Program" in their place and removing the words "child care institutions" and adding "child and adult care institutions" in their place.

(b) Paragraph (b)(2) is amended by removing the words "Child Care Food Program" and adding "Child and Adult Care Food Program" in their place each time they appear and removing the words "child care institutions" and adding "child and adult care institutions" in their place.

§ 235.6 [Amended]

6. In § 235.6, paragraph (c) is amended by removing the words "Child Care Food Program" and adding "Child and Adult Care Food Program" in their place.

§ 235.7 [Amended]

7. In § 235.7, paragraph (c) is amended by removing the words "child care institutions" and adding "child and adult care institutions" in their place.

§ 235.11 [Amended]

8. In § 235.11:

a. Paragraph (a) is amended by removing the words "Child Care Food Program" and adding "Child and Adult Care Food Program" in their place.

b. Paragraph (b)(1) is amended by removing the words "child care institutions." and adding "child and adult care institutions." in their place.

c. Paragraph (b)(3) is amended by removing the words "Child Care Food Program" and adding "Child and Adult Care Food Program" in their place.

Dated: January 9, 1990.

George A. Braley,

Acting Administrator.

[FR Doc. 90-949 Filed 1-12-90; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 918

[Docket No. AO-162-A6; AMS-FV-88-039]

Fresh Peaches Grown in Georgia; Order Amending the Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the marketing agreement and order for peaches grown in Georgia. The amendments: (1) Limit the terms of office of Industry Committee (committee) members to six consecutive one-year terms; (2) change committee voting procedures on size regulation recommendations by requiring at least one affirmative member vote from each of the three growing districts; (3) authorize container and pack regulations and container marking regulations; (4) add authority for positive lot identification procedures for inspected peaches; (5) authorize production research and marketing research and development projects; (6) require a referendum at least every six years to determine if growers are in favor of continuing the marketing order; (7) add provisions protecting the confidentiality of information provided by handlers; and (8) add provisions specifying that the Secretary and the Committee may verify the correctness of reports filed by handlers and compliance with recordkeeping requirements. All of these changes will improve the committee's operations and procedures.

EFFECTIVE DATE: January 16, 1990.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC, 20090-6456; telephone (202) 475-3919, or John R. Toth, Officer-In-Charge, Southeast Marketing Field Office, Florida Citrus Building, 500 Third Street NW., P.O. Box 2276, Winter Haven, Florida 33883-2276; telephone: (813) 299-4770. Copies of this final rule may be obtained from either of the above named individuals.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued April 6, 1988, and published in the **Federal Register** (53 FR 11867) on April 11, 1988; Recommended Decision issued April 12, 1989, and published in the **Federal Register** (54 FR 15218) on April 17, 1989; and Secretary's Decision and Referendum Order issued August 21, 1989, and published in the **Federal Register** (54 FR 35348) on August 25, 1989.

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 and Departmental Regulation 1512-1.

Preliminary Statement

This final rule was formulated on the record of a public hearing held at Byron, Georgia, on April 28, 1988, to consider the proposed further amendment of Marketing Agreement and Order No. 918 (7 CFR part 918), both as amended, regulating the handling of fresh peaches grown in Georgia, hereinafter referred to collectively as the order. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR part 900).

The Notice of Hearing contained amendment proposals submitted by the committee, which locally administers the order. The notice also included proposals by the Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture (Department).

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS), on April 12, 1989, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision containing a notice of the opportunity to file written exceptions thereto by May 17, 1989. No exceptions were filed.

The Secretary's Decision was issued August 21, 1989, directing that a referendum be conducted during the period September 1 through September 22, 1989, among Georgia peach growers to determine whether they favored the proposed amendments to the order. This final rule includes these amendments, all of which received the approval of two-thirds by number of the growers who voted in the referendum and growers representing two-thirds of the volume of peaches voted in the referendum. The amendments: (1) Limit the terms of office of committee members to six consecutive one-year terms; (2) change committee voting procedures on size regulation recommendations by requiring at least one affirmative member vote from each of the three growing districts; (3) authorize container and pack regulations and container marking regulations; (4) add authority for positive lot identification procedures for inspected peaches; (5) authorize production research and marketing research and development projects; (6) require a referendum at least every six years to determine if growers are in favor of continuing the marketing order; (7) add provisions protecting the confidentiality of information provided by handlers; and (8) add provisions specifying that the Secretary and the Committee may verify the correctness of reports filed by handlers and compliance with recordkeeping requirements. The marketing agreement was signed by handlers who, during the representative period, handled not less than 50 percent of the volume of peaches covered by the marketing order.

Small Business Consideration

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities. Interested persons were invited in the Notice of Hearing to present evidence at the hearing on the probable regulatory and informational impact of the regulatory and informational requirements of the amendment proposals on small businesses. In that regard, such evidence was considered in arriving at the findings and conclusions contained in the Recommended Decision and in the Secretary's Decision. Those findings and conclusions are incorporated herein.

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. Marking orders 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 are compatible with respect to small entities.

There are approximately 30 handlers of Georgia peaches subject to regulation under the marketing order and approximately 265 growers in the production area. The Small Business Administration (13 CFR 121.2) has defined small agricultural producers 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 growers and handlers may be classified as small entities.

The amendment to the order limiting the terms of office of committee

members to six consecutive one-year terms is expected to facilitate a regular rotation in committee membership and broaden industry participation in committee decision making. This amendment should strengthen the program with no adverse impact on small entities.

The amendment to alter committee voting procedures to require at least one affirmative vote from each of the three representation districts for any recommendation on size regulations will ensure that there is support for such recommendations in each district. This amendment should benefit small entities in all districts.

The amendment to authorize the committee, with the approval of the Secretary, to establish container, pack, and container-marking regulations in order to facilitate the efficient marking of Georgia peaches is expected to reduce container and other marketing costs. This should benefit small entities. Savings are expected to be directly proportional to the quantity of peaches handled. The impact of any such container, pack or container-marketing regulations will be considered at the time such proposals are made.

The amendment authorizing the committee, with the approval of the Secretary, to establish positive lot identification procedures for peaches inspected under the order should facilitate the committee's compliance effort. It will provide a reliable means of tying the inspection certificates received by the committee to the lots covered by the certificates. Both growers and handlers will benefit because minimum quality and size requirements established under the order are important to the industry in fostering consumer satisfaction and increasing demand. Any additional costs are expected to be proportional to the quantity of peaches handled. The impact of implementing any such positive lot identification procedure would be considered at the time it is made.

The amendment authorizing the committee, with the approval of the Secretary, to establish or provide for the establishment of production research and market research and development projects should benefit growers and handlers by improving the production and marketing of Georgia peaches. Any costs associated with such production and marketing research are expected to be outweighed by the benefits of such research.

The amendment requiring a continuance referendum at least every six years will provide growers with a more frequent opportunity to periodically vote on whether the order should be continued. Such referenda will not adversely affect small entities.

The new provision requiring confidential handler information to be protected from disclosure is expected to improve operation of the order and will not adversely affect small entities.

The new provision authorizing the Secretary and the committee to verify the correctness of reports filed by handlers and check handler compliance with recordkeeping requirements should improve the operation of the order. It should not adversely affect small entities.

All of the amendments and new provisions set forth in this document are designed to enhance the administration, operation and function of the order and should result in an overall positive economic impact on small business.

The amendments and new provisions will increase the recordkeeping burden of the Georgia peach industry. Section 918.77 would require information to be retained by handlers for at least two years. However, the evidence of record indicates that handlers generally maintain such information in the normal course of business for periods longer than two years. Such additional requirements have been approved under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), by the Office of Management and Budget (OMB) under OMB No. 0581-0135.

Order Amending the Order, as Amended, Regulating the Handling of Fresh Peaches Grown in Georgia

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings Upon the Basis of the Hearing Record

Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), a public hearing was held upon proposed further amendment of the Marketing Agreement and Marketing Order No. 918 (7 CFR part 918) regulating the handling of fresh peaches grown in Georgia.

Upon the Basis of the Record, It Is Found That

(1) The order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The order, as amended, and as hereby further amended, regulates the handling of fresh peaches grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which hearings have been held;

(3) The order, as amended, and as hereby further amended, 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 orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The order, as amended, and as hereby further amended, 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 difference in the production and marketing of fresh peaches grown in the production area; and

(5) All handling of fresh peaches grown in the production area defined in the order is in the current of interestate of foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional Findings.* It is necessary and in the public interest to make this final order amending the order effective on the date of publication in the **Federal Register**. The committee may choose to meet and to recommend informal rulemaking actions pursuant to the amendment of § 918.61(a) regarding "Container regulation" contained herein for the upcoming season. Such actions should be completed in sufficient time to allow handlers, if a regulation is adopted, to order and receive new containers prior to the beginning of the harvest season in May, 1990. Thus, any delay beyond the date of publication would tend to interfere with the effective functioning and administration of the order.

In view of the foregoing, it is found and determined that good cause exists for making this amendatory order effective upon publication in the **Federal Register**, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after publication in the **Federal Register**

(Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559).

Determinations

It is hereby determined that:

(1) The "Marketing Agreement, as Amended, Regulating the Handling of Peaches 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 the commodity covered by said order as amended and as further amended) who, during the period August 15, 1988, through August 14, 1989, handled not less than 50 percent of the volume of such peaches covered by the said order as amended and as hereby amended; and

(2) The issuance of this amendatory order, amending the aforesaid order, as amended, is favored or approved by at least two-thirds of the growers who participated in a referendum on the question of its approval and who, during the period August 15, 1988, through August 14, 1989, (which has been deemed to be a representative period), have been engaged within the production area in the production of peaches for fresh market, such growers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of fresh peaches grown in the State of Georgia shall be in conformity to and in compliance with the terms and conditions of the order, as hereby amended, as follows;

The provisions of the proposed marketing agreement and order amending the order contained in the Recommended Decision issued by the Administrator on April 12, 1989, and published in the **Federal Register** (54 FR 15216) on April 17, 1989, and the Secretary's Decision and Referendum Order issued on August 21, 1989, and published in the **Federal Register** (54 FR 35348) on August 25, 1989, shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

List of Subjects in 7 CFR Part 918

Georgia, Marketing agreements and orders, Peaches.

PART 918—FRESH PEACHES GROWN IN GEORGIA

1. The authority citation for 7 CFR part 918 continues to read as follows:

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

Note: These sections will appear in the annual Code of Federal Regulations.

2. Section 918.26 is amended by adding a proviso at the end of the section to read as follows:

§ 918.26 Term of office.

* * * : *Provided,* That no member shall serve more than six full consecutive terms starting with the term beginning March 1, 1989.

3. The last sentence of § 918.30(a) is revised to read as follows:

§ 918.30 Procedure.

(a) * * * For any recommendation of the Industry Committee to be valid, not less than five (5) affirmative votes shall be necessary: *Provided,* That any recommendation on minimum size regulations also shall require at least one (1) concurring vote from each district.

* * * * *

4. A sentence is added at the end of § 918.40 to read as follows:

§ 918.40 Expenses.

* * * For projects conducted pursuant to § 918.72, other funds approved by the Secretary may also be used.

5. A new § 918.61a is added to read as follows:

§ 918.61a Container regulation.

Whenever the Industry Committee deems it advisable to establish a container regulation for any variety or varieties of peaches, it shall recommend to the Secretary the size, capacity, weight, marking, or pack of the container, or containers, which may be used in the handling of these peaches. If the Secretary finds upon the basis of such recommendation or other information available that such container regulation would tend to effectuate the declared policy of the Act the Secretary shall establish such regulation. Notice thereof shall be sent by the Industry Committee to all handlers of record.

§ 918.63 [Amended]

6. Section 918.63 is amended by changing the words "pursuant to §§ 918.60 and 918.61," in the first sentence to "pursuant to §§ 918.60 through 918.61a."

7. Section 918.64 is amended by redesignating the current provisions as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 918.64 Inspection.

* * * * *

(b) The Industry Committee may establish with the approval of the Secretary positive lot identification requirements for lots of peaches inspected and certified pursuant to this section. Whenever implemented, such requirements shall at least specify that upon inspection, all peaches shall be identified by tags, stamps, marks, or other means of identification recognized by the Federal Inspection Service or the Federal-State Inspection Service or any other inspection service designated by the Secretary; that such identification shall be affixed to the container by the handler under the supervision of the Federal Inspection Service or the Federal-State Inspection Service or any other inspection service designated by the Secretary; and that such identification shall not be altered or removed except as directed by the Federal Inspection Service or the Federal-State Inspection Service or any other inspection service designated by the Secretary. For the purposes of this section, lot means the aggregate quantity of peaches of the same variety, in like containers with like identification offered for inspection as a shipping unit.

8. Add the undesignated center heading, **"Research and Development,"** after § 918.71 and add a new § 918.72 to read as follows:

Research and Development

§ 918.72 Production research and market research and development.

The Industry Committee, with the approval of the Secretary, may establish or provide for the establishment of projects involving production research and marketing research and development designed to assist, improve or promote the marketing, distribution and consumption of peaches and the efficient production thereof. The expenses of such projects shall be paid from funds collected pursuant to § 918.41, or from any other sources approved by the Secretary.

9. A new § 918.76 is added to read as follows:

§ 918.76 Confidential information.

All data or other information constituting a trade secret or disclosing a trade position or business condition shall be received by, and kept in the custody of, one or more designated employees of the Industry Committee, and information whch would reveal the circumstances of a single handler shall be disclosed to no person other than the Secretary.

10. A new § 918.77 is added to read as follows:

§ 918.77 Verification of reports and records.

For the purpose of checking compliance with recordkeeping requirements and verifying reports filed by handlers, the Secretary and the Industry Committee through its duly authorized employees shall have access to any premises where peaches are held and, at any time during reasonable business hours, shall be permitted to examine any peaches held and any and all records with respect to matters within the purview of this part. Handlers shall furnish labor necessary to facilitate such examinations at no expense to the Industry Committee. All handlers shall maintain complete records which accurately show the quantity of peaches held, sold, and shipped. The Industry Committee, with the approval of the Secretary, may establish the type of records to be maintained. Such records shall be retained by handlers for not less than two years subsequent to the termination of each fiscal period.

11. Section 918.81 is amended by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as follows:

§ 918.81 Termination.

* * * * *

(d) The Secretary shall conduct a referendum among growers every six years after the effective date of this amended subpart to ascertain whether continuance of this part is favored by growers. However, when a continuance referendum is conducted pursuant to paragraph (c) of this section, this referendum shall be conducted six years after the referendum conducted pursuant to paragraph (c) of this section. The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance of this part is not favored by growers who, during a representative period determined by the Secretary, have been engaged in the production for market of the fruit shall maintain complete records which accurately show the quantity of peaches held, sold, and shipped. The Industry Committee, with the approval of the Secretary, may establish the type of records to be maintained. Such records shall be retained by handlers for not less than two years subsequent to the termination of each fiscal period.

12. Section 918.81 is amended by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as follows:

§ 918.81 Termination.

* * * * *

(d) The Secretary shall conduct a referendum among growers every six years after the effective date of this amended subpart to ascertain whether continuance of this part is favored by growers. However, when a continuance referendum is conducted pursuant to paragraph (c) of this section, this referendum shall be conducted six years after the referendum conducted pursuant to paragraph (c) of this section. The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance of this part is not favored by growers who, during a representative period determined by the Secretary, have been engaged in the production for market of the fruit in the production area, except that termination of this part shall be effective only if announced on or before the last day of the then current fiscal period.

* * * * *

Dated: January 5, 1990.

John E. Frydenlund,

Deputy Assistant Secretary, Marketing and Inspection Services.

OMB Approval No. 0581–0135

Expiration Date: 06/31/91

Marketing Agreement, as Further Amended, Regulating the Handling of Fresh Peaches Grown in Georgia

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. *et seq.*), and in accordance with the applicable rules of practice and procedure effective thereunder (7 CFR part 900) desire to enter into this agreement further amending the marketing agreement regulating the handling of fresh peaches 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 further amended.

The provisions of §§ 918.1 through 918.92, inclusive, of Marketing Order 918 (7 CFR part 918) as amended, and as further amended by the order annexed to and made a part of the decision of the Secretary of Agriculture with respect to the marketing agreement and order regulating the handling of fresh peaches 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.

Section 918.93 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.

Section 918.94 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.

Section 918.95 Order with marketing agreement.

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

The undersigned hereby authorizes the Director, or Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. 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 signatures and seals.

(Firm Nane)

By: _____

(Signature) [1]

(Mailing Adress)

(Title)

(Corporate Seal; if none, so state)

(Date of Execution)

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 amending the marketing agreement, as amended, and the issuance of an order amending the marketing order, as amended regulating the handling of fresh peaches grown in the production area in the State of Georgia would tend to effectuate the declared policy of the Act, caused a notice of public hearing thereon to be issued (53 FR 11867, April 11, 1988), and pursuant thereto a hearing was held on April 28, 1988, at which hearing all interested persons in attendance were afforded due opportunity to be heard.

Upon the basis of the record it is found that:

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

[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.

(2) The marketing agreement, as amended, and as hereby further amended, regulates the handling of fresh peaches grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing agreement upon which hearings have been held;

(3) The marketing agreement, as amended, and as hereby further amended, 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 agreements applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing agreement, as amended, and as hereby further amended, 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 difference in the production and marketing of fresh peaches grown in the production area; and

(5) All handling of fresh peaches grown in the production area defined in the order 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, As Further Amended, Regulating The Handling Of Fresh Peaches Grown In Georgia" upon which the aforesaid public hearing was held has been signed by handlers (excluding cooperative associations of growers who are not engaged in processing, distributing, or shipping covered by the said agreement, as amended, and as hereby further amended) who, during the period August 15, 1988, through August 14, 1989, handled not less than 50 percent of the volume of such peaches.

Therefore, this marketing agreement, further amending said marketing agreement, is entered into at Washington, DC, to become effective upon the effective date of the final order further amending the marketing order.

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

Dated:

[FR Doc. 90-903 Filed 1-12-90; 8:45 am]
BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1446

[Amdt. 1]

Peanut Warehouse Storage Loans and Handler Operations for the 1986 Through 1990 Crops

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule adopts, with clarifying revisions, an interim rule published on December 31, 1987 (52 FR 49347), concerning, for the 1987 through 1990 crops of peanuts, the circumstances in which crushing of sound mature kernels (SMK) and sound split (SS) kernels may be used to satisfy handler obligations for the disposition of contract additional peanuts for a handler operating under nonphysical supervision. Subject to certain restrictions, under the rule such handlers may crush milled peanuts for credit against the export obligation for SMK and SS peanuts when the peanuts to be crushed are ineligible for edible use due to aflatoxin contamination. Also, subject to certain restrictions handlers may, as a one-time option during each marketing year, choose to crush edible-quality milled or farmers stock peanuts for contract additional peanut SMK and SS export credit.

DATE: This final rule is effective January 16, 1990.

FOR FURTHER INFORMATION CONTACT: David L. Kincannon, Peanut Operations Branch, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, telephone 202-382-0152.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures, Executive Order 12291, and Secretary's Memorandum No. 1512-1, and has been classified "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, industries, Federal, State or local government agencies, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The information collection requirements contained in this regulation and information requests authorized by the regulation have been reviewed and approved by the Office of Management and Budget (OMB) under OMB Number 0560-0024.

The title and number of the Federal assistance program to which this rule applies are: Title—Commodity Loans and Purchases, Number—10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

In response to requests for changes in the regulations with respect to nonphysical supervision and crushing of milled SMK and SS kernels for export credit or for crushing farmers stock peanuts for export credit, an interim rule was published in the **Federal Register** on December 31, 1987 (52 FR 49347). The rule amended regulations at 7 CFR part 1446 by adding § 1446.141 to permit, for those handlers operating under nonphysical supervision, export credit on a portion of aflatoxin-contaminated SMK and SS kernels crushed under supervision of the area association in the manner specified by that section. Also, for one time only for each marketing year, such handlers may crush edible quality SMK and SS kernels for contract additional peanut export credit, provided the peanuts are crushed under supervision as specified in the regulations. The only peanuts to which the aflatoxin allowance applies are milled peanuts. This rule has no effect on handlers choosing physical supervision.

Comments

Six comments were received in response to the interim rule.

Credit for Crushing Aflatoxin Peanuts

On respondent recommended that the export credit for crushing of aflatoxin peanuts be limited to the proportion of the crushed quantity of contaminated SMK and SS kernels equal to the proportion that the purchases of contract additional peanuts by the handler bore to the total purchases of peanuts by such handler. That adjustment was provided for in the interim rule and the allowance of the adjustment has been clarified in the final rule.

Another suggestion was to allow a handler to receive full export credit for all aflatoxin peanuts that are crushed by such handler. This suggestion was not adopted since it would unnecessarily permit contract additional peanuts to be sold into the domestic edible market as replacements for aflatoxin contaminated quota peanuts that were crushed and would conflict with the statutory scheme

for crushing or exporting contract additional peanuts.

Crushing Farmers Stock Peanuts for Export Credit

One respondent opposed allowing any export credit for handlers operating under nonphysical supervision for crushing Segregation 1 farmers stock peanuts later found to have Aspergillus Flavus (A. Flavus) mold because such credit would permit a handler the advantage of treating all such peanuts as contract additional peanuts. The final rule clarifies that such farmers stock peanuts cannot be crushed for contract additional peanut export credit. However, once milled, these peanuts can be crushed for export credit to the extent that the milled peanuts are permitted to be considered for such credit under this final rule. With respect to farmers stock peanuts, the final rule provides that, in order for such peanuts to be crushed for export credit as SMK and SS kernels, such peanuts must meet Segregation 1 standards at the time of crushing and at all times preceding the time of crushing.

Average Value of Edible Farmers Stock Peanuts Crushed for Export Credit

One respondent suggested that the average grade of the farmers stock peanuts delivered for crushing should equal or exceed the average grade of all peanuts purchased by the handler. The final rule clarifies that an adjustment will be made in the export credit otherwise allowed if farmers stock peanuts graded out of commingled storage and crushed for export under the provisions of this rule are not of equal average value to the peanuts purchased by the handler as contract additional peanuts. If the crushed peanuts do not have an equal average value, the export credit allowed will be reduced by a factor equal to the ratio of the average value of the farmers stock peanuts crushed for export credit to the average value of the farmers stock peanuts purchased as contract additional peanuts.

Crushing Milled Peanuts (Generally)

One respondent suggested that crushing SMK and SS peanuts derived from peanuts milled under nonphysical supervision was not authorized by statute and that crushing should be allowed only for Segregation 1 farmers stock peanuts, not for milled or shelled peanuts; further, this respondent suggested that the crushing credit for aflatoxin peanuts was not needed in light of the indemnification program operated by the PAC. The Secretary is granted the general authority by statute to regulate the nonphysical supervision option and the disposition requirements for handlers choosing that option. The allowance permitted by the interim rule has been determined appropriate for the reasons set forth in the interim rule. The final rule continues that allowance.

One-Time-Only Switch to Physical Supervision of Edible-Quality Milled Peanuts

Two respondents recommended no limit on the number of times a handler count switch to physical supervision to crush edible quality peanuts for export credit. Both respondents believed the one-time-only limit was unnecessary since the handlers would be paying for the supervision. Another respondent suggested that the one-time-only switch should be by area and by type. This suggestion would allow handlers to switch to physical supervision to complete marketing of one peanut type and to complete the market of another peanut type at a later date. Also, a handler operating in more than one marketing area could utilize the one-time-only switch to physical supervision to complete the marketing of peanuts in one marketing area and continue toward completing marketings in another area. Since the option of nonphysical supervision is a matter of choice and since the one-time switch for edible grade peanuts is designed to avoid year-end marketing problems that might otherwise occur, it has been determined that handlers will continue to be permitted to switch to physical supervision only on a limited basis. Accordingly, under the final rule, handlers choosing nonphysical supervision will be able to switch to physical supervision to crush edible farmers stock peanuts on a one-time-only basis for each type of peanuts in each area.

As before, however, with respect to aflatoxin contaminated milled peanuts, a handler may switch to physical supervision at any time during the marketing year to crush such peanuts for contract additional peanut export credit.

Other Comments

Other comments received were not responsive to the interim rule.

List of Subjects in 7 CFR Part 1446

Loan programs—Agriculture, Peanuts, Price support programs, Warehouse

Final Rule

Accordingly, 7 CFR part 1446, Subpart-Peanut Warehouse Storage Loans and Handler Operations for the 1986 Through 1990 Crops is amended as follows:

PART 1446—[AMENDED]

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

Authority: 15 U.S.C. 714 b and c; 7 U.S.C. 1441, 1445c–2, 1421 *et seq.*; 7 U.S.C. 1358, 1359, 1375.

2. Section 1446.141 is amended by revising paragraphs (a), (c), and (d) to read as follows:

§ 1446.141 Export credits for crushing SMK and SS peanuts for 1987 through 1990 crops.

(a) *Requesting physical supervision of crushing for export credit.* Beginning with 1987 crop peanuts, a handler operating under the provisions of this subpart for nonphysical supervision may crush SMK and SS peanuts for export credit for the applicable kernel type by obtaining physical supervision of the peanuts under the following conditions and those additional conditions set forth in paragraphs (b) through (d) of this section:

(1) *Milled peanuts with aflatoxin.* A handler operating under nonphysical supervision may receive partial export credit for crushing milled SMK and SS peanuts having aflatoxin contamination. To do so, the handler must request and arrange for physical supervision prior to crushing and prior to the final disposition date for contract additional peanuts for the relevant crop year. A request to switch to physical supervision must be made each time a quantity of such peanuts are to be crushed. The provisions in this section for crushing aflatoxin peanuts shall apply only to milled peanuts and shall not apply to farmers stock peanuts.

(2) *Edible quality milled or edible quality farmers stock peanuts.* In addition to the allowance made in paragraph (a)(1) of this section, the following peanuts may be crushed for export credit by a handler who has chosen nonphysical supervision:

(i) Milled peanuts that meet PAC outgoing quality standards for edible export peanuts, and

(ii) Farmers stock peanuts that at the time of crushing meet PAC incoming quality standards for Segregation 1 peanuts.

To receive export credit under this paragraph, the handler must request and arrange for phyiscal supervision of such crushing. Such request must be made prior to the final disposition date for contract additional peanuts for the relevant crop year and, with respect to farmers stock peanuts, prior to the time the peanuts are graded out of commingled storage. Unless otherwise approved by the Executive Vice

President, CCC, only one request may be approved under this paragraph for any handler for the crushing of peanuts of the same crop year, type, and production area.

(3) *Cost of Supervision.* The handler shall bear the cost of all supervision required by this section or undertaken pursuant to this section.

* * * * *

(c) *Determining export credit.* Only those peanuts for which crushing for export credit is specifically provided for in this section may be crushed for such credit by handlers operating under the nonphysical option. Subject to the limitations set forth by this section, export credit for SMK, SS, and AO kernels crushed under physical supervision for credit under this section shall be determined for farmers stock peanuts from data on the applicable ASCS–1007's, and for milled peanuts from the applicable FV–184–9's.

(d) *Crushing peanuts to meet export/disposition obligation*—(1) *Credit for crushing milled peanuts meeting edible export standards.* Milled peanuts that meet PAC outgoing quality standards for edible export peanuts may be crushed for credit as permitted by the provisions of this section and credits for the SMK, SS, or AO kernel content of such peanuts may be applied pound-for-pound toward the export obligation for the like kernel description.

(2) *Credit for crushing milled peanuts not meeting edible export standards due to aflatoxin contamination.* Notwithstanding any other provisions of this section, the amount of SMK and SS kernels contained in aflatoxin contaminated peanuts crushed under the provisions of paragraph (a)(1) of this section that a handler may apply toward the export obligation for like kernel description shall not exceed an amount determined by multiplying the quantity of such peanuts for each kernel type that is crushed by a factor calculated by dividing the amount of contract additional peanuts that the handler purchased for the marketing year by the total amount of peanuts purchased by the handler for the marketing year. The amount of SMK and SS peanuts crushed under the provisions of paragraph (a)(1) of this section, but not applied to the export obligation for SMK and SS kernels, may be applied toward the obligation for AO kernels. The allowance for crushing aflatoxin-contaminated peanuts applies only to milled peanuts.

(3) *Credit for crushing farmers stock Segregation 1 peanuts.* Only farmers stock peanuts that at the time of crushing meet PAC incoming quality standards for Segregation 1 peanuts may be crushed for credit under the provisions of this section. Credits for the SMK, SS, or AO kernel content of such peanuts, as determined under this section, may be applied pound-for-pound toward the export obligation for each like kernel description. However, such amounts shall be subject to adjustment for the average dollar value as provided in paragraph (d)(4) of this section.

(4) *Adjusting export credit for average dollar value of farmers stock peanuts.* With respect to the crushing of farmers stock peanuts for export credit under this section, if CCC determines, based upon the applicable price support schedule, that the average dollar value of edible farmers stock peanuts graded out of a handler's commingled storage and crushed for export credit under the provisions of this section is less than the average dollar value of all peanuts purchased by the handler as contract additional peanuts, the amount of export credit for each kernel description as otherwise determined under paragraph (d)(3) of this section shall be adjusted by multiplying each quantity for each kernel type by a factor to be determined by dividing:

(i) The average dollar value per ton of peanuts graded out of the handler's commingled storage, accounted for as set forth in this subpart, and crushed for export credit under the provisions of this section; by

(ii) The average dollar value per ton of all peanuts purchased by the handler as contract additional peanuts.

(5) *Peanuts not eligible for crushing credit for SMK and SS export obligation.* Milled peanuts that do not meet PAC outgoing quality standards for edible export peanuts for any reason other than aflatoxin contamination, or farmers stock peanuts that do not meet PAC incoming quality standards for Segregation 1 peanuts, shall not be eligible for crushing for SMK and SS export credit. However, crushing credit for such peanuts may be applied toward a handler's AO kernel obligation.

Signed at Washington, DC on January 9, 1990.

John A. Stevenson,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 90–953 Filed 1–12–90; 8:45 am]

BILLING CODE 3410–05–M

7 CFR Part 1446

Peanut Warehouse Storage Loans and Handler Operations for the 1986 through 1990 Crops

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Finale rule.

SUMMARY: This final rule adopts, without change, an interim rule published at 54 FR 40858 with respect to the 1988–90 crops of peanuts. The interim rule established a "shrink" adjustment of 4.5 percent for the export obligation of "contract additional peanuts" purchased by peanut handlers operating under nonphysical supervision if such handlers abide by use restrictions as may be imposed by the Executive Vice President of the Commodity Credit Corporation (CCC).

DATES: This final rule is effective January 16, 1990.

FOR FURTHER INFORMATION CONTACT: David L. Kincannon, Peanut Operations Branch, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, telephone 202–382–0152.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures, Executive Order 12291, and Secretary's Memorandum No. 1512–1, and has been classified "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, industries, Federal, State or local government agencies, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The information collection requirements contained in this regulation and information requests authorized by this regulation have been reviewed and approved by the Office of Management and Budget (OMB) under OMB Number 0560–0024.

The title and number of the Federal assistance program to which this rule applies are: Title—Commodity Loans and Purchases, Number—10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since CCC is not required by 5 U.S.C. 553 or any other

provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovenmental consultation with State and County Officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

On August 14, 1989, the Disaster Assistance Act of 1989 (the Act) (Pub. L. No. 101–82) was enacted. Section 601 of the Act requires, effective for the 1988 through 1990 crops of peanuts, that the export obligation for contract additional peanuts purchased by handlers who choose nonphysical supervision shall be reduced by a shrinkage allowance, as determined by the Secretary, to reflect actual dollar value shrinkage experienced by handlers in commercial operations except that the allowance may not be less than 4.5 percent.

The provisions of the Act with respect to the adjustment in the export obligation were implemented in an interim rule published in the **Federal Register** on October 4, 1989 (54 FR 40858). The interim rule established, for handlers operating under nonphysical supervision, a 4.5 percent shrink adjustment in the export obligation applicable to contract additional peanuts for the 1988 through 1990 crops. The comment period for the interim rule ended November 14, 1989. Ten comments were received representing one area grower, one peanut manufacturer, seven shellers, and one area sheller group. All respondents supported the interim rule as published. However, while supporting the interim rule, the shellers and the sheller organization expressed the opinion that a higher adjustment might be justified. Based upon CCC's review of data currently available to it, CCC has determined that, at this time, the shrink adjustment shall continue to be 4.5 percent. Accordingly, and for the reasons set forth with the interim rule, it has been determined that the interim rule shall be adopted without change.

List of Subjects in 7 CFR Part 1446

Loan Programs—Agriculture, Peanuts, Price support programs, Warehouse.

Final Rule

PART 1446—[AMENDED]

Accordingly, the interim rule published at 54 FR 40858 (October 4, 1989) is hereby adopted as a final rule without change.

Signed at Washington, DC on January 8, 1990.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 90–952–Filed 1–12–90; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 528

[No. 89–485]

RIN 1550–AA08

Nondiscrimination

Date: December 11, 1989.

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule, miscellaneous conforming and technical amendments.

SUMMARY: The Office of Thrift Supervision ("Office" or "OTS") is amending its regulations governing nondiscrimination to comply with changes to the Home Mortgage Disclosure Act ("HMDA") enacted as part of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), and implemented by final amendments to Regulation C, adopted by the Board of Governors of the Federal Reserve System ("FRB") on December 11, 1989 (54 FR 51356 (Dec. 15, 1989)). These final technical amendments to 12 CFR part 528 significantly reduce the existing burden on thrift institutions while retaining the basic examination tools needed for effective enforcement.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Gilda Morse, Director, Consumer Affairs, (202) 906–6238; or Tim Burniston, Compliance Programs, (202) 785–5440, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

In 1980, the Federal Home Loan Bank Board ("Bank Board"), predecessor to the Office, adopted the Loan Application Register/Data Submission Report monitoring system to streamline on-site nondiscrimination examinations and focus examination resources. That monitoring system has remained in place to date. The benefits to savings associations of a stable, familiar system have taken precedence over the possible benefits of modifications. At the same time, examination staff has continued to confirm the usefulness of the information on the Loan Application Registers maintained on-site by each decision center.

However, during this period, most savings associations have had to prepare two aggregate reports related to their fair lending performance. Every six months, each savings association now submits a Data Submission Report ("DSR"), Summarizing certain information on its Loan Application Register ("LAR"). In addition, many associations are also required to file annual HMDA reports analyzing loans made by census tract.

With the passage of FIRREA, HMDA was expanded to cover most mortgage lenders, not just depository institutions, and to require data on the race, sex and income of applicants as well as borrowers. In consultation with the other financial regulatory agencies, the FRB determined that the least burdensome implementation would be for mortgage lenders to maintain and actually submit loan application registers. Thus, savings associations will not have to carry out any compilation. To further reduce the reporting burden for savings associations, and to speed processing, the Office is investigating the feasibility of electronic transmission. If this is developed, the Office will work with savings associations to promote and assist their capacity for electronic data transmission.

On October 6, 1989, the FRB published its proposed rule for a 30-day comment period (54 FR 41255). In its introductory comments, the FRB noted that many institutions are already familiar with the register format since they have complied with similar requirements of other agencies, including the Office. Those comments also noted that the other financial regulatory agencies were reviewing their current requirements to determine the extent to which the register called for by Regulation C could serve as a substitute for the ones they had previously required.

The Office has, in fact, carried out such a review during the FRB's review and adoption of Regulation C in its final form. With Regulation C in place, it is now possible for the Office to promulgate technical amendments to 12 CFR part 528 that bring it into conformity with Regulation C and

promote the Office's ongoing commitment to thorough and effective compliance. However, these amendments to 12 CFR part 528 do not reiterate all Regulation C requirements; they must be read and implemented in conjunction with Regulation C.

The Office is now amending the monitoring requirements of part 528 to eliminate any duplication or inconsistency in relation to Regulation C. To accomplish this, these amendments to 12 CFR part 528 also make certain modifications in the Loan Application Register. All savings associations shall maintain, and retain for examination purposes, identical Loan Application Registers at each decision center. These Loan Application Registers will combine features of HMDA, as amended, and the previous LAR system.

Associations with assets of more than $10 million, and a home or branch office in a metropolitan statistical area ("MSA") shall submit these registers annually in accordance with instructions to be provided by the Office. Associations and other mortgage lenders subject to this submission requirement are also required to record and submit information on purchased loans.

In accordance with Regulation C, mortgage lending service corporations whose assets, combined with those of their parent, exceed $10 million, shall also submit their registers annually. These registers are to be sent directly to the Office, in accordance with instructions to be provided by the Office. All majority-owned mortgage lending service corporations shall use the same Loan Application Register forms as their parent savings associations. Although these subsidiary entities have always been subject to the substantive requirements of 12 CFR part 528, most of these entities previously reported through their parent savings association.

No mortgage lender regulated by the Office will be required to perform any aggregation. However, management aggregation and analysis of this data continues to be recommended as an important part of the association's self-assessment.

With this action, the Office is effecting the following significant burden reductions for savings associations: Information will be collected only once a year, rather than twice a year. The Data Submission Report is no longer required. The HMDA-1 Form is no longer required. Savings associations will no longer have to collect monitoring information on loans that are not covered by HMDA. Certain fields of required information have been deleted, so that the total number of fields to be reported for each loan has not increased.

OTS Amendments

To avoid conflicting definitions, 12 CFR 528.1(c), is being revised to conform to the Regulation C definition of "dwelling." The primary effect of this change is to delete coverage of vacant land.

Section 528.1(e) is being added to reflect the Regulation C treatment of mortgage subsidiaries, maintain consistency with the remainder of part 528, and reaffirm application of part 528 to thrift lending subsidiaries.

Section 528.1(g) is being added to reflect the new statutory definition of a branch for non-depository mortgage lenders, including mortgage lending subsidiaries.

A reference to Regulation C, 12 CFR part 203, is being added to the supplementary guidelines enumerated in 12 CFR 528.1a.

In accordance with Regulation C, 12 CFR 528.6(d)(1) is being amended to require information on multi-family loans, and provide a more flexible method of assigning registers.

In accordance with Regulation C, 12 CFR 528.6(d)(2) mandates a specific format for certain information, and adds applicants' income, state and type of loan purchaser as required information.

Section 528.6(d)(3) provides instructions regarding the remaining information contained in the Loan Application Register.

Section 528.6(d)(5) is being added to integrate HMDA reporting requirements with Office examination and supervisory needs.

Appendices A and B to § 528.6 are removed.

Part 528, as amended, is being reprinted in full for ease of reference.

Administrative Procedure Act

This regulation, effective January 1, 1990, is being issued without the notice and comment and delayed effective date requirements of the Administrative Procedure Act, as amended ("APA"). Pursuant to 5 U.S.C. 553(b)(B) and 553(d)(3), the Office has determined that the regulation is not subject either to the notice and comment or delayed effective date requirements of the APA because the regulations are necessary to conform the Office's regulations to statutory requirements and implementing regulations promulgated by the Board of Governors of the Federal Reserve System.

Regulatory Flexibility Analysis

Because no notice of proposed rulemaking is required for this final rule, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601, do not apply.

Executive Order 12291

It has been determined that this final rule does not constitute a "major rule" and, therefore, the preparation of a final regulatory impact analysis is not required.

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1550-0021.

Comments concerning the collection of information and the accuracy of estimated average annual burden, and suggestions for reducing this burden, should be directed to the Office of Management and Budget, Paperwork Reduction Project, Desk Officer for the Office of Thrift Supervision, Washington, DC, 20503, with copies to the Director, Information Services, Communications Services, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

The collection of information in this regulation is in section 12 CFR 528.6. This information is required by the Office of Thrift Supervision to comply with changes to the Home Mortgage Disclosure Act ("HMDA") and monitor compliance with fair lending statutes and regulations. This information will be used to produce aggregate statistics required by HMDA, focus examination resources, and monitor compliance with Office nondiscrimination requirements. The likely respondents and recordkeepers are business entities engaged in mortgage lending.

Estimated total annual recordkeeping burden: 119,944 hours.

Estimated average annual burden hours per recordkeeper: 41.36.

Estimated number of recordkeepers: 2,900.

Estimated annual frequency of responses: 1.

List of Subjects in 12 CFR Part 528

Advertising, Civil rights, Credit, Fair housing, Home mortgage disclosure, Mortgages, Reporting and recordkeeping requirements, Signs and symbols.

Accordingly, the Office hereby amends part 528, subchapter B, chapter V, title 12, Code of Federal Regulations as set forth below.

1. Part 528 is revised to read as follows:

SUBCHAPTER B—CONSUMER-RELATED REGULATIONS

PART 528—NONDISCRIMINATION REQUIREMENTS

Sec.

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); Sec. 302, 89 Stat. 1125, as amended (12 U.S.C. 2801 *et seq.*); secs. 802–806. 91 Stat. 1147–1148 (12 U.S.C. 2901 *et seq.*) sec. 701, as added by sec. 503, 88 Stat. 1521 (15 U.S.C. 1691); sec. 16, 16 Stat. 144, as amended (42 U.S.C. 1981); sec. 1, 14 Stat. 27, as amended (42 U.S.C. 1982); secs. 801–819, 82 Stat. 81–89, as amended (42 U.S.C. 3601–3619); EO 11063, 27 FR 11527.

§ 528.1 Definitions.

As used in this part 528—

(a) *Application.* For purposes of this part and § 571.24, an application for a loan or other service is as defined in Regulation C, 12 CFR 203.2(b).

(b) *Savings association.* The term "savings association" means any savings association as defined in § 561.43 of this chapter other than a State-chartered savings bank whose deposits are insured by the Bank Insurance Fund.

(c) *Dwelling.* The term "dwelling" means a residential structure (whether or not it is attached to real property) located in a state of the United States of America, the District of Colombia, or the Commonwealth of Puerto Rico. The term includes an individual condominium unit, cooperative unit, or mobile or manufactured home.

(d) *Home-purchase loan.* For the purposes of this part, the term home-purchase loan is as defined in Regulation C, 12 CFR 203.2(g).

(e) *Financial institution.* Mortgage lending institutions governed by this part include:

(1) Any savings association, as defined in paragraph (b) of this section, whether or not the association originated in the preceding calendar year home purchase loans secured by a first lien on a one-to-four family dwelling; and

(2) Any majority-owned savings association service corporation or subsidiary whose home-purchase loan originations in the preceding year totaled 10 percent or more of its loan volume, measured in dollars, and whose assets, combined with those of its parent association, exceeded $10,000,000.

Each such subsidiary mortgage lender is independently subject to the reporting requirements and all other requirements of this part. Required reports shall be filed separately with the Office.

(f) *Decision center.* The term "decision center" means a mortgage lender's office where decisions are made to approve (on terms requested or as changed), or take any adverse action on applications for dwelling-related loans.

(g) *Branch.* See 12 CFR part 203. In accordance with statutory requirements, mortgage lending subsidiaries that, in the preceding calendar year, received applications for, originated, or purchased, five or more home-purchase or home-improvement loans or property located in an MSA, are considered to have a branch office in that MSA, whether or not they have an actual building there.

§ 528.1a Supplementary guidelines.

The Office's policy statement found at 12 CFR 571.24 supplements part 528, and should be read together with part 528. Refer also to the HUD Fair Housing regulations at 24 CFR parts 100 *et seq.*, Federal Reserve Regulation B at 12 CFR part 202, and Federal Reserve Regulation C at 12 CFR part 203.

§ 528.2 Nondiscrimination in lending and other services.

(a) No savings association may deny a loan or other service, or discriminate in the purchase of loans or securities or discriminate in fixing the amount, interest rate, duration, application procedures, collection or enforcement procedures, or other terms or conditions of such loan or other service on the basis of the age or location of the dwelling, or on the basis of the race, color, religion, sex, handicap, familial status (having one or more children under the age of 18), marital status, age (provided the person has the capacity to contract) or national origin of:

(1) An applicant or joint applicant;

(2) Any person associated with an applicant or joint applicant regarding such loan or other service, or with the purposes of such loan or other service;

(3) The present or prospective owners, lessees, tenants, or occupants of the dwelling(s) for which such loan or other service is to be made or given;

(4) The present or prospective owners, lessees, tenants, or occupants of other dwellings in the vicinity of the dwelling(s) for which such loan or other service is to be made or given.

(b) A savings association shall consider without prejudice the combined income of joint applicants for a loan or other service.

(c) No savings association may discriminate against an applicant for a loan or other service on any prohibited basis (as defined in 12 CFR 202.2(z) and 24 CFR part 100).

Note: See also, § 571.24 (b) and (c).

§ 528.2a Nondiscriminatory appraisal and underwriting.

(a) *Appraisal.* No savings association may use or rely upon an appraisal of a dwelling which the savings association knows, or reasonably should know, is discriminatory on the basis of the age or location of the dwelling, or is discriminatory per se or in effect under the Fair Housing Act of 1968 or the Equal Credit Opportunity Act.

(b) *Underwriting.* Each savings association shall have clearly written, non-discriminatory loan underwriting standards, available to the public upon request, at each of its offices. Each association shall, at least annually, review its standards, and business practices implementing them, to ensure equal opportunity in lending

Note: See also, § 571.24 (b), (c)(6), and (c)(7).

§ 528.3 Nondiscrimination in applications.

(a) No savings association may discourage, or refuse to allow, receive, or consider, any application, request, or inquiry regarding a loan or other service, or discriminate in imposing conditions upon, or in processing, any such application, request, or inquiry on the basis of the age or location of the dwelling, or on the basis of the race, color, religion, sex, handicap, familial status (having one or more children under the age of 18), marital status, age (provided the person has the capacity to contract), national origin, or other characteristics prohibited from consideration in § 528.2(c) of this part, of the prospective borrower or other person, who:

(1) Makes application for any such loan or other service;

(2) Requests forms or papers to be used to make application for any such loan or other service; or

(3) Inquires about the availability of such loan or other service.

(b) A savings association shall inform each inquirer of his or her right to file a written loan application, and to receive a copy of the association's underwriting standards.

Note: See also, § 571.24 (a) through (d).

§ 528.4 Nondiscriminatory advertising.

No savings association may directly or indirectly engage in any form of advertising which implies or suggests a policy of discrimination or exclusion in violation of title VIII of the Civil Rights Acts of 1968, the Equal Credit Opportunity Act, or this part 528. Advertisements, other than for savings, shall include a facsimile of the following logotype and legend:

§ 528.5 Equal Housing Lender Poster.

(a) Each savings association shall post and maintain one or more Equal Housing Lender Posters, the text of which is prescribed in paragraph (b) of this section, in the lobby of each of its offices in a prominent place or places readily apparent to all persons seeking loans. The poster shall be at least 11 by 14 inches in size, and the text shall be easily legible. It is recommended that savings associations post a Spanish language version of the poster in offices serving areas with a substantial Spanish-speaking population.

(b) The text of the Equal Housing Lender Poster shall be as follows:

We Do Business In Accordance With Federal Fair Lending Laws.

UNDER THE FEDERAL FAIR HOUSING ACT, IT IS ILLEGAL, ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, RELIGION, SEX, HANDICAP, OR FAMILIAL STATUS (HAVING CHILDREN UNDER THE AGE OF 18) TO:

[ ] Deny a loan for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling or to deny any loan secured by a dwelling; or

[ ] Discriminate in fixing the amount, interest rate, duration, application procedures, or other terms or conditions of such a loan or in appraising property.

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, YOU SHOULD:

SEND A COMPLAINT TO:

Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, DC 20410.

For processing under the Federal Fair Housing Act

AND TO:

Director, Consumer Affairs, Office of Thrift Supervision, Washington, DC 20552.

For processing under Office of Thrift Supervision Regulations.

UNDER THE EQUAL CREDIT OPPORTUNITY ACT, IT IS ILLEGAL TO DISCRIMINATE IN ANY CREDIT TRANSACTION:

[ ] On the basis of race, color, national origin, religion, sex, marital status, or age;

[ ] Because income is from public assistance; or

[ ] Because a right has been exercised under the Consumer Credit Protection Act.

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, YOU SHOULD SEND A COMPLAINT TO:

Director, Consumer Affairs, Office of Thrift Supervision, Washington, DC 20552.

§ 528.6 Monitoring information.

(a) *Information to be requested.* Each savings association or other mortgage lender governed by this part 528 which receives an in-person or written application from a natural person for one of the dwelling-related loans itemized in paragraph (d) of this section, shall request, but not require, either on the application form or a form referring to the application, the following information regarding the applicant and joint applicant (if any):

(1) Race/national origin, using the categories American Indian or Alaskan Native; Asian or Pacific Islander; Black; White; Hispanic; Other (specify);

(2) Sex;

(3) Marital status, using the categories married, unmarried, and separated; and

(4) Age.

(b) If the applicant(s) choose not to provide the information or any part of it, that fact shall be noted on the monitoring form, and the lender shall, to the extent possible, on the bases of sight and/or surname, designate race and sex of each loan applicant and joint applicant.

(c) *Disclosure notice.* Any form used to collect monitoring information required by paragraph (a) of this section shall contain a written notice that such information is requested by the Federal government to monitor compliance with Federal statutes which prohibit lenders from discriminating on those bases against applicants for a loan or other service, and that the lender is required to note race and sex, on the basis of

sight and/or surname, if the applicant(s) choose not to do so.

(d) *Loan application registers.*—(1) *General.* For examination purposes, each financial institution regulated by the Office, whether or not subject to 12 CFR part 203, shall maintain, at each of its decision centers (defined in § 528.1 of this part 528), a current, readily accessible loan application register reporting the following loan types made: one-to-four-family home-purchase loans, refinance of home-purchase loans, multi-family loans, mobile home loans, and home improvement loans. These loan applications may be recorded on a single, consolidated register or on separate registers, in accordance with the business practices of the lender. However, each loan application must have a unique identification number, and it must be possible for the mortgage lending institution to identify the decision center and/or separate register that generated the loan application.

(2) *Loan Application Register, Section I.* Information shall be recorded and reported in accordance with instructions and format provided by 12 CFR part 203 and the Office, and at a minimum include, for all loans, the following data:

(i) Application or Loan Number;

(ii) Date Application Received;

(iii) Application or Loan Information (Type, Purpose, Occupancy, Amount);

(iv) Action taken and date;

(v) Property Location (MSA, State Code, County Code, Tract);

(vi) Applicant and Co-applicant information (Race, Sex, Income);

(vii) Type of Purchaser or Securitizer of Loan;

(viii) *Reason for Denial.* For lenders governed by this part 528, this information must be provided, using the codes provided in 12 CFR part 203.

Paragraphs (d)(2)(i) through (d)(2)(viii) of this section will constitute Section I of the Loan Application Register. All questions of interpretation regarding paragraphs (d)(2)(i) through (d)(2)(viii) of this section shall be determined in accordance with 12 CFR part 203. The format for Part I is to be the hard copy format provided in 12 CFR part 203 or such machine-readable format as the Office may prescribe.

(3) *Loan Application Register, Section II.* For each loan recorded in Part I, Part II is also to be maintained, and shall contain the following additional information:

(i) *Area data: CRA Delineated Community (as defined at 12 CFR 563e.3).* Show Y-yes if the property is located within the area established as the delineated community(ies) in the association's CRA Statement(s). If the property is not within a delineated community, show N-no. If the lender is a mortgage subsidiary not subject to the delineation requirements of 12 CFR 563e.3, show NA.

(ii) *Applicant data*—(A) *Marital Status.* Indicate the marital status of both the applicant and co-applicant using the codes M (married), U (unmarried) and S (separated).

(B) *Age.* Indicate the age of the applicant and co-applicant.

(iii) *Property data*—(A) *Purchase Price.* For home purchase loans, indicate the purchase price of the security property.

(B) *Appraised Value.* Indicate the appraised value of the security property, if an appraisal was made.

(C) *Year Built.* Indicate the year built, or the approximate year built for the security property.

(iv) *Loan terms.* For each heading under this section, if the loan was granted, show the final loan terms. If the loan was not granted, show the loan terms requested.

(A) *Loan to Value Ratio.* Indicate the ration of loan amount to appraised value. If an appraisal was not made, show ratio of loan amount to purchase price, if applicable.

(B) *Interest Rate.* Indicate the contract interest rate.

(C) *Maturity.* Indicate the term of the loan in number of months.

(v) Sections I and II are to be maintained and retained on-site by all savings associations regulated by the Office.

(vi) Additional reporting requirements, covering purchased loans and annual submission of Sections I and II, pertain to the mortgage lending entities described below.

(4) *Additional Reporting Requirements.* All mortgage lending subsidiaries covered by § 528.1(f) of this part 528, and all savings associations that had assets of more than $10,000,000 and had a home or branch office in a metropolitan statistical area (MSA) on December 31 of the preceding year, shall:

(i) Maintain Loan Application Registers, Section I, for all purchased loans. (Race, sex and income need not be provided for purchased loans.)

(ii) Following the calendar year for which the loan data are compiled, file copies of the Loan Application Register, Sections I and II, with the Office in accordance with reporting dates and directions prescribed by 12 CFR part 203 and the Office. These registers will record information about both loans originated and loans purchased during the year. Such data entry copy must be completely legible and in a format to be prescribed by the Office.

(5) Each Decision Center will be responsible for maintaining its own Loan Application Registers. All Decision Centers or branches should submit their Loan Application Registers to the main office of their savings association or mortgage subsidiary, as appropriate, and retain accessible legible copies on-site for examination purposes.

(6) Each main office is responsible for submission of all Loan Application Registers for all its Decision Centers to the Office in accordance with instructions provided. However, each main office may determine, in accordance with its own business practices, whether to submit Loan Application Registers by decision center or in a consolidated form.

(7) *Transition.* All savings associations shall submit Data Submission Reports for the period July 1 through December 31, 1989, in accordance with previous Office procedures. Applications received, loans originated and loans purchased after January 1, 1990 shall be entered in accordance with the requirements of the new Loan Application Register. Loans originated after January 1, 1990 should be reported on the new Loan Application Register, even if the application was also reported on the Data Submission report for the period July 1 through December 31, 1989.

Attachment I to 12 CFR 528.6—Model Loan Application Register

This format for a model loan/application register can be adapted for use by institutions subject to 12 CFR part 528, to satisfy the requirements of that part and 12 CFR part 203.

In developing any form, the information in section I of the model must be segregated from the information in section II (note the heavy black line separating the two sections). Furthermore, the layout of section I must conform exactly to the requirements of 12 CFR part 203. There can be no variation in the order of columns, column headings, etc.

As an alternative option to this combined format, the information in section II may be maintained on a separate page. Under no circumstances, however, may section II information be integrated in section I.

Instructions for completion of the section I information and the accompanying codes for certain fields is contained in Appendix A to 12 CFR part 203. Instructions for the completion of the section II information is contained in 12 CFR 528.6(d)(3).

Paperwork Reduction Act Notice

The Office of Thrift Supervision examiners will use this information to monitor compliance with the Fair Housing Act, Equal Credit Opportunity Act and the Community Reinvestment Act. In summary form, the

information will also be used to satisfy the lender's obligations under the Home Mortgage Disclosure Act.

Collection of the information is mandatory [12 CFR part 203 and 12 CFR part 528].

The public recordkeeping/reporting burden for this collection of information is estimated to average 41.36 hours per respondent, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden to Consumer Affairs Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; and to the Office of Management and Budget, Paperwork Reduction Project (1550–0021), Washington, DC 20503.

BILLING CODE 6720-01-M

Model Loan/Application Register for Institutions Subject to 12 CFR 528

Section I (Required by 12 CFR 203 and 12 CFR 528.6(d)(2))

LOAN/APPLICATION REGISTER Page ___ of ___

Form FR HMDA-LAR
Control number (agency use only)

Name of Reporting Institution

City and State

Section II (Required by 12 CFR 528.6(d)(3))

Applicant or Loan Information						Action Taken		Property Location				Applicant Information A=Applicant CA=Co-Applicant					Type of Purchaser of Loan	Reason (s) for Denial	In CRA Deiln.	Marital Status		Age		Purch. Price in thous	Appr'd Value in thous	L/V Ratio	Int. Rate	Year Built	Maturity
												Race or National Origin		Sex														
Application or Loan Number	Date Application Received (mm/dd/yy)	Type	Purpose	Occupancy	Amount in thousands	Type	Date (mm/dd/yy)	MSA Number	State Code	County Code	Census Tract	A	CA	A	CA	Income in thous				A	CA	A	CA						

GTS Form1498, December 1989
OMB No. 1550-0021

BILLING CODE 6720-01-C

§ 528.7 Nondiscrimination in employment.

(a) No savings association shall, because of an individual's race, color, religion, sex, or national origin:

(1) Fail or refuse to hire such individual;

(2) Discharge such individual;

(3) Otherwise discriminate against such individual with respect to such individual's compensation, promotion, or the terms, conditions, or privileges of such individual's employment; or

(4) Discriminate in admission to, or employment in, any program of apprenticeship, training, or retraining, including on-the-job training.

(b) No savings association shall limit, segregate, or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect such individual's status as an employee because of such individual's race, color, religion, sex, or national origin.

(c) No savings association shall discriminate against any employee or applicant for employment because such employee or applicant has opposed any employment practice made unlawful by Federal, State, or local law or regulation or because he has in good faith made a charge of such practice or testified, assisted, or participated in any manner in an investigation, proceeding, or hearing of such practice by any lawfully constituted authority.

(d) No savings association shall print or publish or cause to be printed or published any notice or advertisement relating to employment by such savings association indicating any preference, limitation, specification, or discrimination based on race, color, religion, sex, or national origin.

(e) This regulation shall not apply in any case in which the Federal Equal Employment Opportunities law is made inapplicable by the provisions of section 2000e–1 or sections 2000e–2 (e) through (j) of title 42, United States Code.

(f) Any violation of the following laws or regulations by a savings association shall be deemed to be a violation of this part 528:

(1) The Equal Employment Opportunity Act, as amended, 42 U.S.C. 2000e–2000h–2, and Equal Employment Opportunity Commission (EEOC) regulations at 29 CFR part 1600;

(2) The Age Discrimination in Employment Act, 29 U.S.C. 621–633, and EEOC and Department of Labor regulations;

(3) Department of the Treasury regulations at 31 CFR part 12 and Office of Federal Contract Compliance Programs (OFCCP) regulations at 41 CFR part 60

(4) The Veterans Employment and Readjustment Act of 1972, 38 U.S.C. 2011–2012, and the Vietnam Era Veterans Readjustment Adjustment Assistance Act of 1974, 38 U.S.C. 2021–2026;

(5) The Rehabilitation Act of 1973, 29 U.S.C. 701 *et al.*; and

(6) The Immigration and Nationality Act, 8 U.S.C. 1324b, and INS regulations at 8 CFR part 274a.

§ 528.8 Complaints.

Complaints regarding discrimination in lending by a savings association shall be referred to the Assistant Secretary for Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, Washington, DC 20410 for processing under the Fair Housing Act, and to the Director, Consumer Affairs, Office of Thrift Supervision, Washington, DC 20552 for processing under Office regulations. Complaints regarding discrimination in employment by a savings association should be referred to the Equal Employment Opportunity Commission, Washington, DC 20506 and a copy, for information only, sent to the Director, Consumer Affairs, Office of Thrift Supervision, Washington, DC 20552.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 90–1019 Filed 1–11–90; 12:39 pm]

BILLING CODE 6720–01–M

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 931 and 932

[No. FHFB 90–01]

Election of Directors of the Federal Home Loan Banks; Eligibility Requirements

AGENCY: The Federal Housing Finance Board.

ACTION: Interim Rule; solicitation of comments.

SUMMARY: The Federal Housing Finance Board ("Board") is amending the eligibility requirements for directors of the Federal home loan banks ("Banks") in order to comply with the recently enacted provisions of the Financial Institutions Reform, Recovery and, Enforcement Act of 1989, (Pub. L. 101–73, 103 Stat. 183, August 9, 1989 ("FIRREA")). FIRREA substantially changed the eligibility requirements for appointive and elective Bank directors. These interim regulations are promulgated to implement FIRREA's changes and to codify in one place the requirements for eligibility to serve as a Bank Director. Appointive directors may no longer have a financial interest in a Federal Home Loan Bank System member institution ("member"). Elective directors must come from members that meet their applicable minimum regulatory capital requirements. The regulations also address newly required community interest directors, general director qualifications and procedural requirements to fill director vacancies.

To further clarify the procedures for electing eligible candidates to directorship positions, the recently published regulation on the Election of Directors, 12 CFR 932.14 is amended to ensure that only eligible candidates are declared elected. This change stems from the applicable minimum regulatory capital requirements which were enacted by FIRREA.

Another change mandated by FIRREA is repeal of the indemnity regulation. The board of directors of each Bank will now determine the terms and conditions under which the Bank may indemnify its directors, officers, employees, or agents.

While the Board is adopting the new regulations set forth below as an interim rule effective January 5, 1990, the Board is also soliciting comments on these regulations with a view toward future revisions. The Board intends to consider comments submitted before promulgating the final rule which will supersede this interim rule.

DATES: This interim rule is effective January 5, 1990. Comments must be received on or before March 5, 1990.

ADDRESSES: Please send comment letters to John F. Ghizzoni, Office of the Secretariat, Federal Housing Finance Board, 1700 G Street NW., Washington, DC 20552. Comments will be available for inspection at the Office of the Secretariat, Federal Housing Finance Board, 1700 G Street NW., Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Amy R. Maxwell, (202) 906–7865, or James H. Gray, Jr., (202) 906–6161, Federal Housing Finance Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

A. Statutory and Regulatory Background

On August 9, 1989, FIRREA was enacted. Among other things, FIRREA established the Board to supervise the Banks and to promulgate such regulations and orders as are necessary to carry out the provisions of the Federal Home Loan Bank Act of 1932 ("Act"). On August 28, 1989 (54 FR 36757, September 5, 1989), the Board issued a

regulation establishing 12 CFR Ch. IX as the place for the Board's regulations.

The Board today is issuing new regulations which effect the changes made by FIRREA to the eligibility requirements for appointive and elective directors of the Banks. These regulations replace the regulations governing directors of the Banks which were promulgated by the former Federal Home Loan Bank Board ("Bank Board") and which were carried forward by the Board and redesignated at 12 CFR 932.8 *et seq.* *See* 54 FR 36759 (Sept. 5, 1989). Further, these regulations are in addition to the regulations promulgated by the Board at 12 CFR part 932 which established the schedule for the 1989 election of directors cycle. *See* 54 FR 38590 (Sept. 19, 1989).

B. Appointive Director Eligibility

The Act as amended by FIRREA, 12 U.S.C. 1427, forbids appointive directors from having any financial interest, as that term is defined in 12 CFR 931.20, in a member of the Bank they serve, or from serving as an officer of a Bank or an officer or director of any member of a Bank. Further, the Act requires that at least two appointive directors at each Bank must be representatives chosen from organizations with more than a two year history of representing consumer or community interests on banking services, credit needs, housing, or financial consumer protections.

1. General

The regulations issued today provide that appointive directors be United States citizens residing in the district of the Bank in which they serve as a member of such Bank's board of directors. The new regulations also require appointive directors to comply with the regulations and policies of the Board and the Bank, presently in effect or to be established by the Board or a Bank's directorate.

2. Financial Interest Limitation

The regulations issued today forbid appointive directors from having financial interests in any member of the Bank they serve. The regulations permit some financial relationships with members, provided that disclosure is made in appropriate cases. The Board seeks to balance appointive directors' investment opportunities posing no risk to director independence consistent with FIRREA and its accompanying Conference Report. Section 931.20 defines financial interest to include ownership of a common or preferred stock share or other security, or equity interest, subordinated debt note, or other obligation of a member used to raise capital funds. This definition does not preclude an appointive director from having a deposit account in a member under conditions described herein. Section 932.18(b) of the regulations issued today provides that no appointive director may be an officer of a Bank or a director or an officer of any member (including insurance companies and certain other financial institutions) of a Bank. In addition, appointive directors cannot hold shares or have any other financial interest, as defined in § 931.20, in any member of the Bank whose board they serve on.

In addition to the specific requirements concerning financial interest limitations contained in the Act section 7 (12 U.S.C. 1427), as amended by FIRREA, the Act, at section 2B (12 U.S.C. 1422B), empowers the Board, as the overseer of the Banks, to promulgate requirements for standards of conduct and avoidance of conflict of interests for appointive directors. Accordingly, the Board is supplementing the statutory requirements of section 7 with additional requirements in these regulations.

In order to further assure an appointive director's impartiality, the Board, by issuing these regulations, requires that appointive directors not hold shares in any subsidiary or affiliate of a member of that Bank, as well as any member's holding company which is not a diversified holding company. Because a diversified holding company may not derive more than fifty percent of its net worth and net earnings from the ownership of Bank members and related activities thereof, it is deemed appropriate for appointive directors to acquire or maintain a financial interest in such entities. For consistency, the Board defines affiliate, company, control, diversified holding company, holdling company, person and subsidiary, with guidance from similar definitions used by the Federal Reserve Board (*See* 12 CFR 215.2) and the Office of Thrift Supervision (*See* 12 CFR 583). The Board intends to rely on the existing body of interpretive opinions or regulations defining these terms, subject to clarifications or distinctions that the Board may choose to make.

These regulations permit an appointive director to obtain credit to finance the purchase of a principal residence or other purpose, and to maintain deposits with a member, its holding companies, subsidiaries or affiliates, of a Bank as long as the director is not given terms on any transaction that are more favorable in like circumstances than those given to persons who are not Bank directors, and so long as the appointive director makes full disclosure to the Board if required by this regulation.

Appointive directors' deposits in a member may not exceed the limits of federal deposit insurance on any account. The purpose of this restriction is to prevent the appearance of any impropriety which could possibly result. By limiting the level of deposits to the maximum insurable amount, the director is in no better or worse condition than any other person who maintains deposits at the insured institution. An appointive director may maintain a non-negotiable certificate of deposit in a member.

The proposed regulations would permit an appointive director to have contractual rights with a member providing that if such contractual right exceeds a minimum threshold of either $10,000 or five percent of the director's total income, the appointive director shall make full disclosure to the Board. In calculating whether the threshold is reached, the regulation considers fixed as well as contingent contracts considering the previous calendar year, the current calendar year and the aggregate of contractual rights which the director has with all members of the Bank that the director serves.

Section 932.18(d)(1) extends the various prohibitions or disclosure requirements to an appointive director's immediate family and dependents. Section 932.18(d)(2) extends these prohibitions to a company owned in part or whole by an appointive director to the extent of the director's ownership interest in the company. The Board regards the specified relationships as sufficiently close to require monitoring of those individuals' financial interests to remain consistent with the Act's new requirement to avoid financial interests which may improperly influence a director. Section 932.18(e) permits an indirect financial interest that arises through participation in a mutual fund, as suggested by the Conference Report. *See* FIRREA, Conference Report to HR 1278, August 4, 1989, p. 425.

3. Ineligible Appointive Directors

Consistent with the Act, § 932.18(f)(1) specifies that when an appointive director fails to meet eligibility requirements, the office becomes vacant upon the expiration of the reporting period for the opportunity to cure in § 932.18(h), but an ineligible appointive director may continue to act as a Bank director until the vacancy is filled, or the term of such office expires, whichever occurs first. *See* 12 U.S.C. 1427(f)(2).

Section 932.18(f)(2) provides that Bank resolutions or other directorate actions

will not be challenged as *ultra-vires* or as an unauthorized act solely because an appointive director fails an eligibility requirement.

4. Certification and Reporting

To assist in monitoring appointive director eligibility, the Board requires the appointive director in § 932.18(g)(1) to certify annually that he or she meets the eligibility requirements of appointive directors. Section 932.18(g)(2) requires appointive directors who know or suspect they may be ineligible to report to the Board within thirty days the factual basis for their possible ineligibility.

5. Opportunity to Cure

Numerous appointive directors who met the eligibility criteria when appointed, have now become or may in the future become ineligible to continue to serve as appointive directors due to the stricter eligibility requirements of FIRREA. Additionally, the new member potential created by FIRREA may make other incumbent appointive directors vulnerable to subsequent ineligibility. To avoid any inequitable result, the Board will allow appointive directors a reasonable opportunity to "cure" their loss of eligibility by divesting the conflicting affiliation.

To remedy ineligibility, an appointive director must promptly report to the Board the specific facts causing the ineligibility and the specific actions the appointive director will take to remedy the ineligibility. Section 932.18(h) specifies that the ineligibility must be reported to the Board within thirty days and remedied within ninety days of the change in law or Bank membership that caused the ineligibility. The time period to cure the ineligibilities triggered by FIRREA begins upon publication of these regulations.

6. Community Interest Directors

The new "community interest" director positions were created by Congress to add a community/consumer perspective to the Banks' boards of directors. In the Bank System, directors represent the membership of the Bank and the public interest. The Act contemplates that the various interests will balance each other. Section 7 of the Act, 12 U.S.C. 1427, has always provided that most directors be elected from among the members' management, but that some of the directors be appointed by the Board as public interest directors. FIRREA created a special category of public interest directors referred to in the regulations as "community interest directors". The "community interest" is a specific category within the concept of "public interest".

Sections 931.15 and 931.17 apply the FIRREA requirements for the selection of community interest directors. A community interest director shall be a representative chosen from a consumer or community organization. The directors will bring a consumer/community perspective and expertise to the boards of the Banks. The regulation also clarifies that community interest directors are subject to all of the requirements of other appointive directors.

The regulations make clear that the community interest requirement is to be flexibly interpreted to provide for a wide array of consumer or community interests. The definition of consumer or community organization is broadly written to include consumer or community groups as well as any other group that actively promotes consumer or community interests and has at least a two year history of representing either consumer or community interests in any of four broad categories: banking services, credit needs, housing, or financial consumer protections.

By way of example and not limitation, among the groups that could qualify as consumer or community interest organizations are: consumer advocates such as Associated Community Organizations for Reform Now, the Consumer Federation of America, NAACP, and the National Urban League; foundations such as the Ford Foundation; development corporations such as Local Initiatives Support Corporation; state and local government or regional organizations such as community development corporations, local development credit unions and other community development intermediaries or state housing finance representatives.

Other organizations might also qualify. For example, an organization may not have traditionally involved itself in the types of activities required of a consumer or community interest organization, but if the organization or local chapter of a national or regional organization has been actively involved in one of the four areas for a two-year period, such as sponsoring a sustained project to house low-income people in the community, such an organization, or local chapter of an otherwise non-qualifying national organization, would then qualify as a consumer or community organization for purposes of its district Bank.

The Board interprets the requirement that community interest directors be representative "chosen from" consumer or community organizations to require that the directors come from the organization's membership, so long as the director is actively involved in one of the organization's qualifying interests. However, this does not require that the candidate be a full time staff member, or officer or director of the organization. The Board has to date and intends to continue soliciting potential community interest directors from a broad array of consumer or community organizations. The Board seeks to ensure that, as with any director, consumer or community interest directors put his or her fiduciary duty to the Bank above any other obligation.

Section 932.19(a) applies the community interest director appointment criteria to directors appointed on or after August 9, 1989, the enactment date of FIRREA, in keeping with the Conference Report. When appointing new directors to any Bank board of directors, the Board shall first appoint directors who meet the community interest criteria until such board has at least two community interest directors. Thereafter, the Board will continue to make appointments such that there be at least two community interest directors on the Bank's board of directors. Section 932.19(c) sets forth the selection process for community interest directors.

C. Elective Director Eligibility

1. Allocation of Elective Directorships

The Board designates each elective directorship as representative of the members in a particular state. Members may seek an elective director position only in the state where their principal place of business is located. By resolution of its directorate, the member designates an officer or a director to represent the member as its candidate. The member's designated candidate, if elected by members from that state, is elected to represent all the members from that state. Each member in the particular state is allotted one vote for each directorship allotted to that state.

The Act requires that each state be allocated at least one elective directorship. The Act also requires that each state have at least the number of elective directorships that it had on December 31, 1960. A table showing the number of elective directorships allocated to each state on December 31, 1960 is included in these regulations at § 932.20. The Act provides for the remainder of the elective directorships to be allocated in the approximate ratio of the percentage of required stock of members located in that state to the total required stock of members in the district, both calculated as of the year preceding the election. The Board sets

each member's percentage of required stock on the basis of one percent of the aggregate unpaid principal of each member's home mortgage loans, home-purchase contracts, and similar obligations as of the previous year-end, but not less than $500 for each such member. A percentage distribution of each state's required stockholdings is calculated to determine the number of directors allocated to each state. The allocation plus the number of directorships established in 1960 determines the total number of directorship designations for each state.

The Act provides for the members to cast a number of votes equal to the number of shares of stock that were required by the Bank at the previous year-end, but limits the number of votes to the average number of shares of stock that were held by the members in such state.

2. General

As with appointive directors, the regulations issued today require that elective directors be United States citizens residing in the Bank distict where they serve as Bank directors. In addition, the regulations require that elective directors be officers or directors of a Bank member which has its principal place of business in the state the elective director represents. The regulations also require elective directors to comply with the regulations and policies of the Board and the Bank, presently in effect or to be established by the Board or a Bank's directorate.

3. Minimum Capital Requirements

Section 932.21(b)(1) codifies the FIRREA requirement that elective directors must represent members that meet any applicable minimum regulatory capital requirements as set forth by the member's appropriate regulatory agency: the Office of Thrift Supervision for thrifts, the Office of the Comptroller of the Currency or the Federal Deposit Insurance Corporation for commercial banks, the National Credit Union Administration for credit unions and other appropriate regulators for other members.

To ensure that directors represent only members in strong capital positions, § 932.21(b)(1) provides that an officer or director of a member, when such member has obtained an exemption from or an exception to its applicable capital requirements, is ineligible to serve as an elective director. *See e.g.* 12 U.S.C. 1464(t) (7) and (8). The Board is of the opinion that the Bank System will be best served if only the strongest members serve as directors. Further, officers and directors of members that do not meet their applicable minimum regulatory capital requirements, including those granted exemptions or exceptions, should concentrate their efforts on building the member's capital position, rather than on the affairs of the Bank.

Section 932.21(b)(2) stipulates that an elective director or director-elect whose member failed to meet the applicable minimum regulatory capital requirements shall not be eligible for election to a directorship during the calendar year in which the failure occurred. He or she is once again eligible for election in the succeeding year, provided his or her member meets the applicable minimum regulatory capital requirements during each phase of the election process.

Section 932.21(c) applies the elective director eligibility requirements to a director-elect who does not meet the eligibility requirements on the date he or she would otherwise assume the directorship.

4. Ineligible Elective Directors

Consistent with the Act, § 932.21(d)(1) specifies that when an elective director fails to meet eligibility requirements, the office becomes vacant and the ineligible Bank director must immediately cease to act as a Bank director. *See* 12 U.S.C. 1427(f)(3).

Section 932.21(d)(2) provides that Bank resolutions or other directorate actions will not be challenged as for as an unauthorized act solely because an elective director fails an eligibility requirement.

5. Certification and Reporting

To assist in monitoring elective director eligibility, the Board requires the elective director in § 932.21(e)(1) to certify annually that he or she meets the eligibility requirements of elective directors; based on information known to his or her member including but not limited to reports pertaining to applicable minimum regulatory capital requirements as set forth by the member's appropriate regulatory agency; or any other factual basis from which the directors knows or suspects he or she may be ineligible. Section 932.21(e)(2) requires an elective director who knows or suspects that he or she may be ineligible to immediately report to the Board in writing the factual basis for the known or suspected ineligibility.

D. Vacancies

Section 932.22 of these regulations provides that vacancies in appointive directorships shall be filled by Board appointment. Vacancies in elective directorships shall be filled by a majority of the Bank's remaining directors. An elective director replacement shall come from the same state as the vacated elective director, unless there are no eligible candidates from such state. Both appointive and elective directorship vacancies shall be filled as soon as practicable, and the new director shall serve for the unexpired term of his or her predecessor.

E. Election of Directors

Section 932.14, which was effective September 15, 1989, provides the specific dates and procedures for the balloting and voting process for elective directors. Also included in this section is the requirement mandated by FIRREA that no candidate who represents a member that fails to meet any applicable minimum regulatory capital requirements as set forth by the member's appropriate regulatory agency shall be declared elected the Board. As amended today, § 932.14(d) further stipulates in the event that the candidate receiving the highest number of votes is ineligible at the time of election, the candidate who meets the eligibility requirements and has the next highest number of votes shall be declared elected by the Board.

F. Indemnity

Section 707 of FIRREA also gives the board of directors of each Bank the authority to determine the terms and conditions for indemnity for directors, officers, employees and agents of such Bank. By this rule, the Board repeals its indemnity regulation, 12 CFR 932.42.

G. Administrative Procedures Act

The Board is adopting these regulations as an interim rule effective January 5, 1990. The Board finds that for its adoption of these rules the notice and comment procedures prescribed by the Administrative Procedures Act, 5 U.S.C. 553 (1982), may be delayed pursuant to 5 U.S.C. 553(b)(3)(B) and 5 U.S.C. 553(d)(3).

The Board finds good cause exists to suspend the usual thirty day delayed effective date for its adoption of Federal Home Loan Bank System director eligibility regulations (12 CFR parts 931 and 932). The Board also finds that the public interest requires that this interim rule become effective January 5, 1990. The reasons in support of this finding are as follows:

First, FIRREA required upon its enactment on August 9, 1989 that appointive directors no longer be officers of a Bank, officers or directors of any member of a Bank, or hold any

financial interest in any member of a Bank. In order to provide interpretive guidance on FIRREA generally, and specifically on what constitutes a financial interest in a member, it is necessary that these regulations become effective immediately.

Second, FIRREA requires that two of the appointive directors for each Bank be community interest directors; representatives chosen from an organization with more than a two-year history of representing either consumer or community interests on Banking services, credit needs, housing, or financial consumer protections. With appointive director terms expiring in December 1989, the Board needs to establish criteria now to consider community interest director candidates.

Third, FIRREA requires that elective directors come only from members that meet any applicable minimum regulatory capital requirements as set forth by a member's appropriate regulatory agency. In order to provide guidance to aspiring elective director candidates in the current election cycle (*See* FR 38590), the Board must make these regulations effective immediately.

Although time does not permit public commit in advance of the effective date of this interim rule, the Board recognizes the value of public comment and has provided for a sixty day comment period from the projected effective date for these regulations. The Board intends to consider comments received before promulgating the final rule which will supersede this interim rule.

H. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for these regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

List of Subjects

12 CFR Part 931

Federal home loan banks.

12 CFR Part 932

Conflict of interests, Federal home loan banks.

Accordingly, the Federal Housing Finance Board hereby amends parts 931 and 932, subchapter B, chapter IX, title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 931—DEFINITIONS

1. The authority citation for part 931 is revised to read as follows:

Authority: Sec. 2B, 103 Stat. 414, as amended (12 U.S.C. 1422b).

2. Section 931.14 is added to read as follows:

§ 931.14 Affiliate.

Any person or company which controls, is controlled by, or is under common control with a member, including, but not limited to, any holding company, any subsidiary, or any service corporation of a member.

3. Section 931.15 is added to read as follows:

§ 931.15 Community interest directors.

A director who is appointed by the Board, subject to all of the requirements of other appointive directors, and is a member in good standing of a consumer or community organization that has more than a two-year history of representing consumer or community interests in any of four areas: banking services, credit needs, housing, or financial consumer protections. Community interest directors must have experience and commitment to consumer and community interests in order to provide the Banks' boards of directors with consumer and community perspective and expertise.

4. Section 931.16 is added to read as follows:

§ 931.16 Company.

Any corporation, partnership, trust, joint-stock company, similar organization, or any other form of business entity not specifically listed herein.

5. Section 931.17 is added to read as follows:

§ 931.17 Consumer or community organization.

Any organization which for a period of at least two years has advocated, represented, promoted or been actively involved in the protection, improvement or expansion of consumer or community rights, needs and interests, provided, that such organization has at least a two year history of representing consumer or community interests on banking services, credit needs, housing, or financial consumer protections.

6. Section 931.18 is added to read as follows:

§ 931.18 Control.

To own, hold with the power to vote, hold proxies representing, or otherwise hold the power to control ten percent or more of the voting shares or rights of a company.

7. Section 931.19 is added to read as follows:

§ 931.19 Diversified holding company.

A holding company whose subsidiary member and related activities listed below represented, on either an actual or pro forma basis, less than fifty percent of both its consolidated net worth at the close of its preceding fiscal year and of its consolidated net earnings for such fiscal year:

(a) Furnishing or performing management service for a subsidiary member;

(b) Conducting an insurance agency or an escrow business;

(c) Holding or managing or liquidating assets owned by or acquired from a subsidiary member;

(d) Holding or managing properties used or occupied by a subsidiary member;

(e) Acting as trustee under deed of trust; or

(f) Furnishing or performing such other services or engaging in such other activities as a member's appropriate regulatory agency may approve or may prescribe by regulation as being a proper incident to the operations of members. For purposes of the foregoing, consolidated net worth and consolidated net earnings shall be determined in accordance with generally accepted accounting principle.

8. Section 931.20 is added to read as follows:

§ 931.20 Financial interest or relationship.

(a) A financial interest includes the ownership of:

(1) Any common or preferred capital stock shares;

(2) Any other equity security;

(3) Any debt security or obligation, including subordinated debt.

(b) A financial relationship includes:

(1) Any type of deposit or savings account;

(2) Any other contractual right to the payment of money, whether contingent or fixed, in the previous calendar year or the current calendar year.

(3) Loans or extensions of credit.

9. Section 931.21 is added to read as follows:

§ 931.21 Holding company.

Any company that directly or indirectly controls a member, or a holding company of a member but does not include:

(a) Any company by virtue of its direct or indirect ownership or control of voting stock of a member acquired in connection with the underwriting of securities if such stock is held only for such period of time (not exceeding 120 days unless extended by the appropriate

regulatory agency) as will permit the sale thereof on a reasonable basis; or

(b) Any trust (other than a pension, profit-sharing, stockholders' voting or business trust) which directly or indirectly controls a member if such trust by its terms must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust, and:

(1) Was in existence and was directly or indirectly in control of a member on June 26, 1987; or

(2) Is a testamentary trust.

10. Section 931.22 is added to read as follows:

§ 931.22 Member.

An institution admitted to membership in a Bank.

11. Section 931.23 is added to read as follows:

§ 931.23 Person.

An individual or company.

12. Section 931.24 is added to read as follows:

§ 931.24 Principal place of business.

The principal place of business of a member is the state in which the member maintains its home office established as such in conformity with the laws under which the member is organized.

13. Section 931.25 is added to read as follows:

§ 931.25 Subsidiary.

Any company which is owned or controlled directly or indirectly by a person, and includes any service corporation owned in whole or in part by a member, or a subsidiary of such service corporation.

PART 932—ORGANIZATION OF THE BANKS

1. The authority citation for part 932 is revised to read as follows:

Authority: Sec. 2B, 103 Stat. 414, as amended (12 U.S.C. 1422b); sec. 7, 103 Stat. 417, as amended (12 U.S.C. 1427).

1a. The undesignated centerheads in part 932 (as redesignated from part 522) are removed.

2. Section 932.14 is amended by adding one sentence at the end of paragraph (d) to read as follows:

§ 932.14 Election of directors.

* * * * *

(d) * * * If the candidate receiving the highest number of votes cast is ineligible to be declared elected, the Board shall declare elected the candidate receiving the next succeeding highest number of votes who is eligible to be declared elected.

* * * * *

3. Section 932.18 is added to read as follows:

§ 932.18 Appointive director eligibility.

(a) *General.* Each appointive director shall:

(1) Be a citizen of the United States;

(2) Be a bona fide resident of the district served by the Bank for which he or she is a director; and

(3) Comply with all regulations and policies of the Board and of the Bank, presently in effect or to be established by the Board or a Bank's directorate.

(b) *Financial interests.* No director who is appointed pursuant to section 7(a) of the Act may, during such director's term of office, serve as an officer of any Bank or a director or officer of any member of such Bank, or hold shares, or any other financial interest in any member of such Bank, non-diversified holding company, subsidiary or affiliate, thereof, except as provided in paragraph (c) of this section.

(c) *Prohibited transactions.* An appointive director of a Bank may not have any financial interest in any member of such Bank.

(d) *Permitted financial relationships.*

(1) An appointive director of a Bank may have a permitted financial relationship with a member of such Bank.

(2) Notwithstanding paragraph (d)(1) of this section, appointive directors must disclose the following permitted financial relationships to the Board:

(i) Any type of deposit or saving account in a member of such Bank in excess of the limits of federal deposit insurance.

(ii) Any contractual rights with a member of such Bank that exceeds a minimum threshold of either $10,000 or 5 percent of the director's total income.

(iii) Any loans or extensions of credit by a member of such Bank to the appointive director in excess of $50,000, except loans or extensions of credit for the purpose of purchasing or financing the director's principal residence.

Provided that all permitted financial relations are transacted in the ordinary course of business of the member, its holding companies, subsidiaries or affiliates thereof, and only so long as the terms are no more favorable than would be available in like circumstances to persons who are not Bank directors.

(e) *Attributed financial interests or financial relationships.* (1) Financial interests or financial relationships of an appointive director's spouse, child, or other dependents, shall be considered interests of the appointive director.

(2) A financial interest or a financial relationship of a company in which an appointive director has an ownership interest is deemed to be a financial interest or a financial relationship as the case may be of the director to the extent of the director's ownership interest.

(f) *Mutual funds.* Appointive directors may have an indirect interest in securities or other financial interests of a member that arises through ownership of shares or other investment units of mutual funds.

(g) *Effect of ineligibility.* (1) If any appointive director shall cease to have the qualifications set forth in section 7(a) of the Act or this part, such directorship shall become vacant upon the expiration of the reporting period for the opportunity to cure § 932.18(h), but such person may continue to act as an appointive director until his or her successor assumes the vacated office or the term of such office expires, whichever occurs first.

(2) Any vote by an appointive director during a period when such director has ceased to have the qualifications set forth in section 7(a) of the Act or this part shall not be deemed to render void or invalid any action taken by the board of directors during such period.

(h) *Certification and reporting.* (1) By January 15 of each year, each appointive director must certify in writing to the Board that he or she continues to meet all applicable qualifications for his or her appointment set forth in section 7 of the Act and this part.

(2) If a director knows or suspects that he or she is ineligible, the director must report the factual basis for the ineligibility, with specificity, to the Board in writing within thirty days of the event that caused or may have caused his or her ineligibility and the specific actions the appointive director will take to remedy the ineligibility.

(3) Prior to the initial appointment, and annually thereafter by January 15 of each year, each appointive director of a Bank shall fully disclose the existence of:

(i) A contractual right as defined in paragraph (b)(2) of § 931.20; and

(ii) Any type of deposit or savings account that the appointive director has with any member of such Bank. Failure to make such disclosure shall render the appointive director ineligible under this part; and

(iii) Any loan or extension of credit from any member of such Bank.

(i) *Opportunity to cure.* Notwithstanding paragraph (f) of this section, if an appointive director ceases to have the requisite qualifications set forth in section 7 of the Act or this part

because of changes in law, Bank membership, marital status, inheritance or gift which occur subsequent to appointment and such director reports the ineligibility as provided in paragraph (g)(2) of this section and the proposed method to eliminate the cause of ineligibility with specificity by the latter of within thirty days of the change in law, Bank membership, marital status, inheritance or gift; or within thirty days of the effective date of this section, the Board shall give such director a reasonable opportunity, not to exceed the latter of ninety days from the date of the change in law, Bank membership, marital status, inheritance or gift; or within ninety days from the effective date of this section, to eliminate the cause of the ineligibility.

4. Section 932.19 is added to read as follows:

§ 932.19 Community interest directors.

(a) *Requirements.* The designation of community interest directors shall apply to the appointive directorships which become vacant on or after August 9, 1989, until there are at least two such directors on each Bank's board of directors. Thereafter at least two of the appointive directors for each Bank shall be community interest directors.

(b) *Effect of ineligibility.* If a community interest director ceases his or her personal involvement or ceases to be affiliated with a consumer or community organization, as defined in § 931.17, or if the organization the community interest director was chosen from shall change its principal purpose to something other than consumer or community interests on banking services, credit needs, housing, or financial consumer protections, or shall cease to operate, be dissolved, or declared insolvent, such director shall cease to have the qualifications to be a community interest director.

(c) *Selection process.* Each Bank shall forward to the Board a list of qualified candidates compiled after active solicitation of nominations from qualified consumer or community organizations within its district. The Board may on its own also solicit nominations of qualified candidates. Final selection shall be in the sole direction of the Board.

5. Section 932.20 is added to read as follows:

§ 932.20 Minimum number of elective directorships.

Under section 7(c) of the Act, the number of elective directorships allocated to members located in each state cannot be less than the number of directorships that were filled by the members from the state in 1960. The following list sets forth the number of elective directorships that were filled by members from each state in 1960:

Federal home loan bank—State	No. of Elective Directorships in 1960
Atlanta:	
Alabama	1
Dist. of Columbia	1
Florida	1
Georgia	1
Maryland	1
North Carolina	1
South Carolina	1
Virginia	1
Boston:	
Connecticut	1
Maine	1
Massachusetts	3
New Hampshire	1
Rhode Island	1
Vermont	1
Chicago:	
Illinois	4
Wisconsin	4
Cincinnati:	
Kentucky	2
Ohio	4
Tennessee	2
Dallas:	
Arkansas	1
Louisiana	2
Mississippi	1
New Mexico	1
Texas	3
Des Moines:	
Iowa	2
Minnesota	2
Missouri	2
North Dakota	1
South Dakota	1
Indianapolis:	
Indiana	5
Michigan	3
New York:	
New Jersey	4
New York	4
Puerto Rico and Virgin Islands	0
Pittsburgh:	
Delaware	1
Pennsylvania	6
West Virginia	1
San Francisco:	
Arizona	1
California	3
Nevada	1
Seattle:	
Alaska	1
Hawaii and Guam	1
Idaho	1
Montana	1
Oregon	1
Utah	1
Washington	1
Wyoming	1
Topeka:	
Colorado	2
Kansas	3
Nebraska	1
Oklahoma	2

6. Section 932.21 is added to read as follows:

§ 932.21 Elective director eligibility.

(a) *General.* Each elective director shall:

(1) Be a citizen of the United States,

(2) Be a bona fide resident of the district served by the Bank for which he or she is a director,

(3) Be an officer or a director of a member with its principal place of business in the state the elective director represents, and

(4) Comply with all regulations and policies of the Board and of the Bank, presently in effect or to be established by the Board or a Bank's directorate.

(b) *Minimum capital requirements.* (1) No person who is an officer or director of a member that fails to meet any applicable minimum regulatory capital requirements as set forth by a member's appropriate regulatory agency is eligible to hold the office of Bank director, regardless of any exemption or exception granted by any appropriate regulatory agency.

(2) A person whose member failed to meet the applicable minimum regulatory capital requirements shall not be eligible for election to a directorship during the calendar year in which the failure occurred. This person is once again eligible for election in the succeeding year, provided his or her member continues to meet the applicable minimum regulatory capital requirements during each phase of the election process.

(c) *Ineligible director-elect.* A person declared elected pursuant to 12 CFR 932.14(d) will not be eligible to take office or serve as a director if, as of the date he or she would otherwise assume the directorship, he or she does not meet the eligibility requirements set forth in section 7 of the Act or this part.

(d) *Effect of ineligibility.* (1) If any elective director shall cease to have the qualifications set forth in section 7 of the Act or this part, such directorship shall immediately become vacant and such person shall not continue to act as a Bank director.

(2) Any vote by an elective director during a period when such director has ceased to have the qualifications set forth in section 7(a) of the Act or this part shall not be deemed to render void or invalid any action taken by the board of directors during such period.

(e) *Certification and reporting.* (1) By January 15 of each year, each elective director must certify in writing to the Board that he or she continues to meet all applicable qualifications set forth in section 7 of the Act and this part.

(2) If a director knows or suspects that he or she is ineligible, the director must immediately report the factual basis for the known or suspected ineligibility, with specificity, to the Board in writing.

7. Section 932.22 is added to read as follows:

§ 932.22 Vacancies in directorships.

(a) *Appointive director vacancy.* A vacancy in an appointive directorship shall be filled through appointment by the Board as soon as practicable.

(b) *Elective director vacancy.* A vacancy in an elective directorship shall be filled by the affirmative vote of a majority of the remaining Bank directors as soon as practicable. Such vacancy shall be filled with a director from the state of the vacated director, unless there are no eligible candidates from such state.

(c) *Appointive and elective director vacancies.* The newly appointive or elective director shall serve for the unexpired term of his or her predecessor in the vacated office.

§ 932.42 [Removed]

8. Section 932.42 is removed.

By the Federal Housing Finance Board.

Dated: January 5, 1990.

Jack Kemp,

Chairman.

[FR Doc. 90-967 Filed 1-12-90; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-ASW-69; Amdt. 39-6465]

Airworthiness Directives; Bell Helicopter Textron, Inc. (BHTI) Model 205A, 205A-1, 212, and 412 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD), which was previously made effective as to all known U.S. owners and operators of certain BHTI Model 205A, 205A-1, 212 and 412 helicopters by three separate priority letter AD's. The priority letter AD's required inspection of the tail rotor (T/R) trunnion bearing housing for cracks and were necessary to prevent failure of the T/R trunnion bearing housing, which could result in the loss of tail rotor control and subsequent loss of the helicopter.

DATES: *Effective* February 13, 1990, as to all persons except those persons to whom it was made immediately effective by Priority Letter AD's 86-16-11, issued August 14, 1986; and 86-17-09 and 86-17-10, issued August 21, 1986, which contained this amendment.

Compliance: Required as indicated in the body of the AD, unless already accomplished.

ADDRESSES: Applicable AD-related material may be examined at the Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Room 158, Bldg. 3B, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Henry, Rotorcraft Directorate, Rotorcraft Certification Office, ASW-170, FAA, Southwest Region, Fort Worth, Texas 76193-0170, telephone (817) 624-5168.

SUPPLEMENTARY INFORMATION: On August 14, 1986, priority letter AD 86-16-11 was issued and made effective immediately as to all known U.S. owners and operators of certain BHTI Model 412 helicopters. Subsequently, on August 21, 1986, priority letter AD's 86-17-09 and 86-17-10 were issued and made effectve immediately to all known U.S. owners and operators of certain BHTI Model 212 and 205A and 205A-1 helicopters, respectively. These AD's required visual inspection of the T/R trunnion bearing housing assembly for cracks or undersized end webs, and an additional inspection for excess balance washers. These AD's were prompted by the reported failure of an improperly machined T/R trunnion bearing housing assembly. AD action was necessary to detect cracks and undersized end webs in the trunnion bearing housing assembly that could result in loss of T/R control and subsequent loss of the helicopter.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD's effective immediately by individual letters issued August 14, 1986, to all known U.S. owners and operators of certain BHTI Model 412 helicopters, and August 21, 1986, to all known U.S. owners and operators of certain BHTI Model 205A, 205A-1, and 212 helicopters. Subsequently, it has been determined that the inspection for excess balance washers should no longer be required. Since the other conditions still exist, a consolidated AD is hereby published in the Federal Register as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations to make the requirements of the priority letter AD's effective as to all persons. The first two paragraphs of the priority letter AD's have, however, been revised for clarification, and the inspection for excess balance washers has been removed because it is no longer necessary.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Bell Helicopter Textron, Inc.: Applies to all BHTI Model 205A and 205A-1 helicopters with retrofit kit, P/N 212-704-129-101, installed (reference Bell Service Instructions 212-68, May 29, 1981); all Model 212 helicopters, S/N's 30501 through 30999, 31101 through 31273, 31275, 32101 through 32142, and 32201 through 32262 with T/R hub and blade assembly, P/N 212-011-701-001, installed; and all Model 412 helicopters, S/N's 33001 through 33118, 33120, and 33121; certificated in any category. (Docket No. 89-ASW-69.)

Compliance is required as indicated, unless already accomplished.

To prevent failure of the tail rotor and subsequent loss of control of the helicopter, accomplish the following:

(a) *For the Model 412:* (1) Within the next 20 hours' time in service after the effective date of this AD, and every 20 hours' time in service thereafter, until the requirements of paragraph (a)(2) have been accomplished, visually inspect the T/R trunnion bearing housing assembly, P/N 212-011-716-1, for cracks in the end web. If cracks are present, remove and replace with a serviceable part before further flight.

(2) Within the next 150 hours' time in service or within 60 days after the effective date of this AD, whichever occurs first, remove the T/R hub and blade assembly, P/N 212-011-701-1, and measure the end web thickness of the trunnion bearing housing, P/N 212-011-716-1. Replace any housing with an end web thickness of 0.059 inches or less with a serviceable part.

Note: Accomplishment of Bell Helicopter Alert Service Bulletin (ASB) 412-86-25, Revision "A," dated July 23, 1986, fulfills the requirements of paragraph (a).

(b) *For the Model 205A, 205A-1, and 212:* (1) Within the next 25 hours' time in service after the effective date of this AD, and every 25 hours' time in service thereafter, until the requirements of paragraph (b)(2) have been accomplished, visually inspect the T/R trunnion bearing housing assembly, P/N 212-011-716-1, for cracks in the end web. If cracks are present, remove and replace with a serviceable part before further flight.

(2) Within the next 150 hours' time in service or within 60 days after the effective date of this AD, whichever occurs first, remove the T/R hub and blade assembly, P/N 212-011-701-1, and measure the end web thickness of the trunnion bearing housing, P/N 212-011-716-1. Replace any housing with an end web thickness of 0.059 inches or less with a serviceable part.

Note: For Models 205A, 205A-1 and 212, accomplishment of Bell Helicopter Alert Service Bulletins (ASB) 205-86-24 Revision "A" and ASB 212-86-39 Revision "A" both dated July 23, 1986, fulfills the requirements of paragraph (b).

(c) An alternate method of compliance or adjustment of the compliance time, which provides an equivalent level of safety, may be used when approved by the Manager, Rotorcraft Certification Office, ASW-170, FAA, Fort Worth, Texas.

(d) In accordance with FAR §§ 21.197 and 21.199, flight is permitted to a base where removal and replacement of the affected trunnion bearing housing required by this AD may be accomplished.

This amendment becomes effective February 13, 1990, as to all persons except those persons to whom it was made immediately effective by Priority Letter AD's 86-16-11, issued August 14, 1986, and 86-17-09 and 86-17-10, issued August 21, 1986, which contained this amendment.

Issued in Fort Worth, Texas, on December 27, 1989.

John J. Shapley,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 90-930 Filed 1-12-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-ANE-17; Amdt. 39-6425]

Airworthiness Directives; CFM International (CFMI) CFM56-3C and CFM56-3B Model Turbofan Engines Installed in Boeing 737-400 Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting Airworthiness Directive (AD) T89-13-51, which was previously made effective as to all known U.S. owners and operators of certain CFMI CFM56-3B and all CFM56-3C model turbofan engines by individual telegram. The AD requires that all CFM56-3C and certain CFM56-3B model turbofan engines have their fan blade and fan disk hardware removed from service prior to further flight. Additionally, aircraft with CFM56-3C model turbofan engines must be modified to operate at reduced thrust levels. The AD is needed to prevent failure of stage 1 fan blades and cracking of stage 1 fan disk dovetail posts due to high cycle fatigue, which could result in fan blade release and complete loss of engine power.

DATES: *Effective:* January 17, 1990, as to all persons except those to whom it was made immediately effective by Telegraphic Airworthiness Directive (TAD) T89-13-51, issued June 14, 1989, which contained this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 17, 1990.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable documents may be obtained from Boeing Commerical Airplanes, Publications Department, Post Office Box 3707, Seattle, Washington 98124-2207, or may be examined in the Regional Rules Docket, Room 311, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Marc J. Bouthillier, Engine Certification Branch, ANE-142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

SUPPLEMENTARY INFORMATION: On June 14, 1989, TAD T89-13-51 was issued and made effective immediately as to all known U.S. owners and operators of certain CFM56-3B and all CFM56-3C model turbofan engines. The TAD requires that all CFM56-3C and certain CFM56-3B model turbofan engines have their fan blade and fan disk hardware removed from service prior to further flight. Additionally, the TAD requires that all aircraft with CFM56-3C model turbofan engines must be modified to operate at reduced CFM56-3B thrust levels. AD action is necessary to prevent fan blade failure and fan blade release which may result in complete loss of engine power. The FAA has determined that CFM56-3C stage 1 fan blades have failed in fatigue when operated at CFM56-3C thrust ratings. It has also been determined that a CFM56-3C stage 1 fan disk has experienced cracking in the dovetail post area while operated at CFM56-3C thrust ratings. The information contained in this AD differs from TAD T89-13-51 by the addition of a third fan blade part number, and by partial restoration of CFM56-3C takeoff and maximum continuous ratings under certain conditions. The procedures and limits by which CFM56-3C takeoff, maximum continuous, and maximum climb ratings may be used are defined in the appropriate FAA approved Airplane Flight Manual (AFM). All other information described in this AD has been previously stated in TAD T89-13-51.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual TAD issued June 14, 1989, to all known U.S. owners and operators of certain CFM56-3B and all CFM56-3C model turbofan engines. These conditions still exist, and the AD is

hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective as to all persons.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

CFM International: Applies to CFM International (CFMI) CFM56–3B and CFM56–3C model turbofan engines installed in Boeing 737–400 aircraft.

Compliance is required as indicated, unless already accomplished.

To prevent fan blade failure which may result in complete loss of engine power, accomplish the following prior to further flight:

(a) For CFM56–3C model turbofan engines:

(1) Remove from service, stage 1 fan disk Part Number (P/N) 335–014–511–0, and replace with a serviceable part which has not been operated at the CFM56–3C ratings.

(2) Remove from service, fan blade P/N's 9527M99P08, 9527M99P09, 1285M39P01, and replace with serviceable parts which have not been operated at CFM56–3C ratings.

(3) Incorporate the provisions of Boeing Service Bulletin (SB) 737–71–1203, Revision 3, dated June 1, 1989, as described in item III titled, "Accomplishment Instructions", part V, "Airplane Wiring Modification for Operation at 22,000 Poungs Thrust Levels with two CFM56–3C–1 Engines Installed."

(4) Operate CFM56–3C engines at CFM56–3B thrust levels, or at limited CFM56–3C thrust levels, in accordance with the appropriate Airplane Flight Manual (AFM) listed herein: D6–8734–4K5, Revision 4; D6–8734–4Y01, Revision 6; D6–8734–4Y02, Revision 2; D6–8734–405, Revision 4; or D6–8734–408, Revision 3.

(b) For CFM56–3B model turbofan engines, Serial Numbers (S/N) 725101, 725102, 725103, 725104, 725105, 725107, 725108, 725141, and 725142 which have been operated at the CFM56–3C rating:

(1) Remove from service, stage 1 fan disk P/N 335–014–511–0, and replace with a serviceable part which has not been operated at the CFM56–3C ratings.

(2) Remove from service, fan blade P/N's 9527M99P08, 9527M99P09, and 1285M39P01, and replace with serviceable parts which have not been operated at CFM56–3C ratings.

Note: Ground running for maintenance purposes should be conducted in accordance with CFM56–3B rating limitations.

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

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

Modification procedures shall be done in accordance with Boeing SB 737–71–1203, Revision 3, dated June 1, 1989. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, Publications Department, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the Regional Rules Docket, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Room 311, Burlington, Massachusetts 01803, or at the Office of the Federal Register, 1100 L Street NW., Room 8301, Washington, DC 20591.

This amendment becomes effective January 17, 1990, as to all persons except those persons to whom it was made immediately effective by TAD T89–13–51, issued June 14, 1989, which contained this amendment.

Issued in Burlington, Massachusetts, on December 1, 1989.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 90–919 Filed 1–12–90; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 89–ANM–12]

Alteration of McCall, ID, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This action alters the McCall, ID., Transition Area to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the McCall Municipal Airport. This action will ensure segregation of aircraft operating under Instrument Flight Rules from aircraft operating under Visual Flight Rules. This action also corrects the docket number for this action.

EFFECTIVE DATE: 0901 u.t.c., March 8, 1990.

FOR FURTHER INFORMATION CONTACT: Robert Brown, ANM–535, Federal Aviation Administration, Docket No. 88–ANM–21, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, Telephone: (206) 431–2576.

SUPPLEMENTARY INFORMATION:

History

On September 29, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the McCall, ID., Transition Area (54 FR 40125). The proposed action would provide additional airspace for aircraft executing a new nondirectional radio beacon (NDB) instrument approach procedure to the McCall Municipal Airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal

were received. Accordingly, the amendment is adopted as proposed.

In addition, the airspace docket number appearing in the Notice of Proposed Rulemaking erroneously read "88–ANM–12." This action corrects it to read "89–ANM–12."

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

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the McCall, ID, transition area to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the McCall Municipal Airport. This alteration is intended to ensure segregation of aircraft operating under Instrument Flight Rules from aircraft operating under Visual Flight Rules. The transition area, as altered, will be depicted on aeronautical charts for pilot reference.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal.

Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

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

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

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

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

§71.181 [Amended]

2. Section 71.181 is amended as follows:

McCall, Idaho [Revised]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of McCall Municipal Airport (Latitude 44 53'23" N., Longitude 116 06'00" W.); that airspace extending upward from 1,200 feet above the surface within 6 miles west and 17 miles east of the McCall VORTAC 344 and 164 radials extending from 20 miles south to 19 miles north of the VORTAC.

Issued in Seattle, Washington, on December 11, 1989.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division Northwest Mountain Region.

[FR Doc. 90–914 Filed 1–12–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 75

[Airspace Docket No. 89–ASO–16]

Alteration of Jet Route J–213; West Virginia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of Jet Route J–213, located in the vicinity of Beckley, WV, by extending that route from Beckley to Louisville, KY, via a south dogleg. The ARMEL standard terminal arrival (STAR) which began at Beckley for transition into several terminal areas is cancelled. The extension of J–213 improves the flow of traffic into several terminal areas and reduces controller workload.

EFFECTIVE DATE: 0901 u.t.c. March 8, 1990.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On July 17, 1989, the FAA proposed to amend part 75 of the Federal Aviation Regulations (14 CFR part 75) to alter the description of Jet Route J–213 located in the vicinity of Beckley, WV, by extending that route from Beckley to Louisville, KY (54 FR 29909). The ARMEL STAR is established from Beckley as a transition route to several east coast airports. The ARMEL STAR is cancelled and is replaced by two STAR's using Beckley as the initial starting point. Extending J–213 via a south dogleg provides an established route in an area where aircraft are usually vectored. This action reduces controlled workload. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 75.100 of part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to part 75 of the Federal Aviation Regulations alters the description of Jet Route J–213, located in the vicinity of Beckley, WV, by extending that route from Beckley to Louisville, KY, via a south dogleg. The ARMEL STAR which begins at Beckley for transition into several terminal areas is cancelled. The extension of J–213 improves the flow of traffic into several terminal areas and reduces controller workload.

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

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 75 of the Federal Aviation Regulations (14 CFR part 75) is amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for part 75 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g)

(Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-213 [Amended]

By removing the words "to Beckley." and by substituting the words "Beckley; INT Beckley 264° and Louisville, KY, 101° radials; to Louisville."

Issued in Washington, DC, on January 4, 1990.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 90-915 Filed 1-12-90; 8:45 am]

BILLING CODE 4910-13-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1221

NASA Seal and Other Devices, and the Congressional Space Medal of Honor

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR part 1221 by revising one paragraph in subpart 1221.1, "NASA Seal, Insignia, Logotype Insignia, Program and Astronaut Badges, and Flags, and the Agency's Unified Visual Communications System." This revised paragraph adds the restricted use of a NASA Seal plaque in paragraph (a)(5) of § 1221.111.

EFFECTIVE DATE: January 16, 1990.

ADDRESSES: Public Services Division, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Robert Schulman, (202) 453-8315.

SUPPLEMENTARY INFORMATION: Since this revision involves administrative and editorial management decisions and procedures, notice and public comment are not required.

The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, since it will not exert a significant economic impact on a substantial number of small entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1221

Decorations, Medals, Awards, Flags, Seals, Insignia, Unified Visual Communications System.

For reasons set out in the Preamble, 14 CFR part 1221 is amended as follows:

PART 1221—THE NASA SEAL AND OTHER DEVICES, AND THE CONGRESSIONAL SPACE MEDAL OF HONOR

1. The authority citation for 14 CFR part 1221 continues to read as follows:

Authority: 42 U.S.C. 2472(a) and 2473(b)(1).

2. Section 1221.111 is amended by revising paragraph (a)(5) to read as follows:

§ 1221.111 Use of the NASA seal.

(a) * * *

(5) Plaques; the design of the NASA Seal may be incorporated in plaques for display in agency auditoriums, presentation rooms, lobbies, offices of senior officials, and on the fronts of buildings occupied by NASA. A separate NASA Seal in the form of a 15-inch, round, bronze colored plaque on a walnut colored wood base is also available, but prohibited for use in the above representational manners. It is restricted to use only as a presentation item by the Administrator and the Deputy Administrator.

* * * * *

Dated: January 8, 1990.

Richard H. Truly,

Administrator.

[FR Doc. 90-926 Filed 1-12-90; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 14, 19, and 20

Public Hearing Before a Public Advisory Committee; Standards of Conduct and Conflicts of Interest; Public Information; Editorial Amendments

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending certain of its regulations for public hearings before a public advisory committee, standards of conduct and conflicts of interest, and public information to correct cross-references and to update a title. This action will improve the accuracy of the regulations.

EFFECTIVE DATE: January 16, 1990.

FOR FURTHER INFORMATION CONTACT: T. Rada Proehl, Regulations Editorial Staff (HFC-222), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

SUPPLEMENTARY INFORMATION: FDA is amending certain of its regulations for a public hearing before a public advisory committee, standards of conduct and conflicts of interest, and public information to correct cross-references and update a title. The amendments in 21 CFR 14.7(b), 19.10(a), 20.41(b)(4), and 20.47(c) are wholly editorial in nature. For this reason, FDA finds for good cause that notice and public procedure and delayed effective date are unnecessary (5 U.S.C. 553(b)(B) and (d)).

List of Subjects

21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

21 CFR Part 19

Conflict of interests.

21 CFR Part 20

Confidential business information, Courts, Freedom of information, Government employees.

Therefore, under the Federal Advisory Committee Act, the Federal Food, Drug, and Cosmetic Act, and the Freedom of Information Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 14, 19, and 20 are amended as follows:

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

1. The authority citation for 21 CFR part 14 continues to read as follows:

Authority: Secs. 201-902 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321-392); 21 U.S.C. 41-50, 141-149, 467f, 679, 821, 1034; secs. 2, 351, 354-360F, 361 of the Public Health Service Act (42 U.S.C. 201, 262, 263b-263n, 264); secs. 2-12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451-1461); 5 U.S.C. App. 2; 28 U.S.C. 2112.

§ 14.7 [Amended]

2. Section 14.7 *Administrative remedies* is amended in paragraph (b) by removing "45 CFR 5.82" and replacing it with "45 CFR 5.34".

PART 19—STANDARDS OF CONDUCT AND CONFLICTS OF INTEREST

3. The authority citation for 21 CFR part 19 continues to read as follows:

Authority: Sec. 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371).

§ 19.10 [Amended]

4. Section 19.10 *Food and Drug Administration Conflict of Interest Review Board* is amended in paragraph

(a) by removing "Division of Human Resources Management" and replacing it with "Division of Ethics and Program Integrity".

PART 20—PUBLIC INFORMATION

5. The authority citation for 21 CFR part 20 continues to read as follows:

Authority: Secs. 201–902 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–392); secs. 301, 302, 303, 307, 310, 311, 351, 352, 354–360F, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1); 5 U.S.C. 552; 18 U.S.C. 1905.

§ 20.41 [Amended]

6. Section 20.41 *Time limitations* is amended in paragraph (b)(4) by removing "45 CFR 5.82" and replacing it with "45 CFR 5.34".

§ 20.47 [Amended]

7. Section 20.47 *Denial of a request for records* is amended in paragraph (c) by removing "45 CFR 5.82" and replacing it with "45 CFR 5.34".

Dated: January 5, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90–933 Filed 1–12–90; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Parts 510 and 522

Animal Drugs, Feeds, and Related Products; Serum Gonadotropin and Chorionic Gonadotropin for Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Intervet America, Inc. The NADA provides for subcutaneous use of reconstituted serum gonadotropin and chorionic gonadotropin for inducing fertile estrus (heat) in prepuberal (noncycling) gilts over 5½ months old and weighing at least 85 kilograms (kg) (185 pounds (lb)).

EFFECTIVE DATE: January 16, 1990.

FOR FURTHER INFORMATION CONTACT: James F. McCormack, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4317.

SUPPLEMENTARY INFORMATION: Intervet America, Inc., P.O. Box 318, 405 State St., Millsboro, DE 19966, filed NADA 140–856 providing for use of a freeze-dried serum gonadotropin and chorionic gonadotropin to be reconstituted for subcutaneous use for induction of fertile estrus (heat) in prepuberal (noncycling) gilts over 5½ months old and weighing at least 85 kg (185 lb). The NADA is approved as of January 5, 1990, and the regulations are amended by adding new § 522.1079 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In addition, Intervet America, Inc., has not been listed in the list of sponsors of approved applications. That list in § 510.600(c) (1) and (2) is amended to reflect the new sponsor.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding a new entry "Intervet America, Inc.", and in the table in paragraph (c)(2) by numerically adding a new entry "057926", to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Intervet America, Inc., P.O. Box 318, 405 State St., Millsboro, DE 19966....	057926
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
057926.....	Intervet America, Inc., P.O. Box 318 405 State St., Millsboro, DE 19966

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

4. New § 522.1079 is added to read as follows:

§ 522.1079 Serum gonadotropin and chorionic gonadotropin.

(a) *Specifications.* Each dose consists of 400 international units (I.U.) serum gonadotropin and 200 I.U. chorionic gonadotropin as a freeze-dried powder to be reconstituted with 5 milliliters of sterile aqueous diluent.

(b) *Sponsor.* See No. 057926 in § 510.600(c) of this chapter.

(c) *Conditions of use in swine.* (1) *Amount.* 400 I.U. serum gonadotropin with 200 I.U. chorionic gonadotropin per 5 milliliters dose per animal.

(2) *Indications for use.* For induction of fertile estrus (heat) in prepuberal (noncycling) gilts.

(3) *Limitations.* For subcutaneous use in prepuberal gilts over 5½ months old and weighing at least 85 kilograms (185 pounds).

Dated: January 5, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90-934 Filed 1-12-90; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Halofuginone Hydrobromide; Technical Amendment

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations concerning medicated feed applications for use of halofuginone hydrobromide in animal feeds. In 21 CFR 558.4(d), the assay limits for Type B/C feeds for halofuginone hydrobromide currently reads 70–125 percent. Those limits are amended to read 75–125 percent.

EFFECTIVE DATE: January 16, 1990.

FOR FURTHER INFORMATION CONTACT: George Graber, Center for Veterinary Medicine (HFV-220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4438.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 21, 1985 (50 FR 33718), FDA published a document establishing assay limits for Type B/C halofuginone hydrobromide feeds as 75–125 percent. When those assay limits were transferred to 21 CFR 558.4, they were inadvertently published as 70–125 percent. This document amends the regulations in 21 CFR 558.4, in the table "Category II", in the entry "Halofuginone hydrobromide", in the fourth column under "Assay limits percent[1] type B/C[2]" by removing "70–125" and inserting in its place "75–125".

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.4 [Amended]

2. Section 558.4 *Medicated feed applications* is amended in paragraph (d) in the table "Category II", in the entry "Halofuginone hydrobromide", in the fourth column under "Assay limits percent[1] type B/C[2]" by removing "70–125" and inserting in its place "75–125".

Dated: January 8, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90-981 Filed 1-12-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 7 and 602

[T.D. 8280]

RIN 1545-AL34

Certain Corporate Distributions to Foreign Corporations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulation.

SUMMARY: This document provides temporary Income Tax Regulations relating to the distribution of stock and securities under section 355 and section 367(e)(1) by a domestic corporation to a person who is not a United States person, and also relating to a liquidating distribution of property under section 332 and section 367(e)(2) by a domestic or foreign corporation to a foreign corporation. These regulations are necessary to implement section 367(e)(1) and (2) as added by the Tax Reform Act of 1986. These provisions affect the taxability of the corporation making the distribution as well as its shareholders receiving the distribution. This document also provides temporary regulations under section 367 (a) and (b) relating to the closing of the taxable year and to the application of sections 354 and 361 in certain reorganizations under section 368(a)(1)(F). The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

EFFECTIVE DATES: Except as set forth below, these regulations are effective with respect to distributions after July 31, 1986. The following provisions have the following special effective dates:

§ 1.367(a)–1T(e)—April 1, 1987
§ 1.367(a)–1T(f)—January 1, 1985
§ 1.367(e)–1T—February 16, 1990
§ 1.381(b)–1—April 1, 1987
§ 7.367(b)–1(c)—April 1, 1987
§ 7.367(b)–1(f)—January 1, 1985

FOR FURTHER INFORMATION CONTACT: Charles P. Besecky of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) ((202) 566–6444, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545–1124. The estimated average burden associated with the collection of information in this regulation is 8 hours per respondent or recordkeeper.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater time, depending upon their particular circumstances.

For further information concerning this collection of information, and where to submit comments on this collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

Background

This document contains temporary regulations (26 CFR parts 1, 7 and 602) under section 367(a), section 367(b) and section 367(e) (1) and (2) of the Internal Revenue Code of 1986, as revised by sections 631(d)(1) and 1810(g) of the Tax Reform Act of 1986 (100 Stat. 2085, 2272, Pub. L. 99–514). Section 1006(e)(13) of the Technical and Miscellaneous Revenue Act of 1988 (102 Stat. 3342, Pub. L. 100–647) provided an amendment to the effective date for certain liquidations under section 367(e)(2) before June 10, 1987. The regulations are issued under the authority contained in section 367(a)(6), section 367(b)(1), section 367(e) (1) and (2) and section 7805(a).

Need for Temporary Regulations

The regulations under section 367 (a)(6) and (b)(1) that close the taxable

year of the transferor corporation in certain inbound and outbound reorganizations under section 368(a)(1)(F) will apply to certain reorganizations occurring after March 30, 1987. This guidance, which effectuates prior announcements, is necessary so that taxpayers will know when to file the appropriate tax returns. The regulations under section 367(b)(1) that close the taxable year of the transferor corporation in certain foreign to foreign reorganizations under section 368(a)(1)(F) will generally apply to certain reorganizations occurring in a taxable year beginning after February 15, 1990. Taxpayers may choose to apply this rule to such reorganizations occurring in taxable years beginning after December 31, 1986.

The regulations under section 367 (a)(6) and (b)(1) that clarify that there are exchanges under sections 354(a) and 361(a) in all inbound, outbound, and foreign to foreign reorganizations under section 368(a)(1)(F) will apply to reorganizations after December 31, 1984 (for temporary regulations under section 367(a)), and December 31, 1977 (for temporary regulations under section 367(b)). This guidance is being provided to apprise taxpayers of the transfers occurring in a reorganization and to prevent tax avoidance in these transactions.

The regulations under section 367(e)(1) will apply to distributions occurring after February 15, 1990. The regulations under section 367(e)(2) will generally apply to distributions after July 31, 1986. The temporary regulations under section 367(e) (1) and (2) will clarify the law in these areas and provide taxpayers with needed immediate guidance. Many taxpayers have not been able to effectuate distributions or liquidations. Furthermore, there is some uncertainty as to the tax consequences and reporting obligations with respect to such transactions. These effective dates are also necessary to prevent avoidance of tax and to provide regulatory relief in certain instances.

Accordingly, these regulations are not subject to the public notice requirements of 5 U.S.C. section 553(b) or to the effective date limitation of subsection (d) of that section.

Explanation of Provisions

Closing of the Taxable Year and the Application of Sections 354 and 361 in Certain Reorganizations Under Section 368(a)(1)(F)

Rev. Rul. 87–27, 1987–1 C.B. 134, and Rev. Rul. 88–25, 1988–1 C.B. 116, indicate that a reorganization can qualify under section 368(a)(1)(F) where the transferor corporation or the acquiring corporation is a foreign corporation. In such a reorganization, the taxable year of the transferor corporation did not close under section 381(b). Notice 87–29, 1987–1 C.B. 474, and Notice 88–50, 1988–1 C.B. 535, state that the regulations under section 367 would be revised to require the closing of the taxable year in a reorganization under section 368(a)(1)(F) of a domestic corporation into a foreign corporation (or vice versa). These regulations provide for the closing of the taxable year in certain instances.

Rev. Rul. 87–27 and Rev. Rul. 88–25 also reiterate that an exchange of stock for stock under section 354(a), and an exchange of assets for stock under section 361(a), occur in a reorganization under section 368(a)(1)(F) where the transferor or the acquiring corporation is a foreign corporation. This states existing law. Notice 87–29 and Notice 88–50 state that the regulations would be revised to clarify that there is an actual or constructive transfer of assets and an exchange of stock in all inbound, outbound, and foreign to foreign reorganizations under section 368(a)(1)(F). These regulations provide for such transfers and exchanges. Although the temporary regulations under section 367(a) relating to exchanges under sections 354 and 361 in certain reorganizations under section 368(a)(1)(F) are effective for reorganizations occurring after December 31, 1984, the Internal Revenue Service considers that the same rule would apply with respect to former regulations issued under the Tax Reform Act of 1976.

Distributions Described in Section 367(e)(1)

The distributing corporation in a distribution described in section 355(a) normally does not recognize gain or loss on the distribution of the stock of a controlled corporation to the distributing corporation's shareholders. However, gain may be recognized by a distributing domestic corporation in a section 355 distribution to a person who is not a United States person if and to the extent regulations issued under section 367(e)(1) so provide. In addition, gain may be required to be recognized pursuant to regulations to be issued under section 337(d).

Section 367(e)(1) specifically provides that, in the case of any distribution described in section 355 (or so much of section 356 as relates to section 355) by a domestic corporation to a person who is not a United States person, to the extent provided in regulations, gain shall be recognized under principles similar to the principles of section 367. Section 367(a) provides for the recognition of gain upon the transfer of property by a United States person to a foreign corporation in certain nonrecognition exchanges, unless an exception provided under section 367(a) or the regulations issued thereunder is applicable.

General Rule for Distributions Described in Section 367(e)(1)

The regulations provide, in general, that a distributing domestic corporation shall recognize gain upon the distribution of stock or securities of a domestic or foreign corporation to its shareholders who are not United States persons. An anti-abuse rule is included to prevent the distributing domestic corporation from selectively distributing high-basis blocks of controlled corporation stock to shareholders who are not United States persons in order to reduce the gain recognized on the distribution. The anti-abuse rule provides that, for purposes of determining the gain to be recognized by the distributing domestic corporation on the distribution of stock or securities to shareholders who are not United States persons, the basis of the stock or securities distributed to shareholders who are not United States persons is considered to be the average basis of all of the particular class of stock or securities (as the case may be) owned by the distributing domestic corporation.

There are three exceptions to the general rule of gain recognition. The first exception applies to distributions where the distributing domestic corporation and the domestic controlled corporation are United States real property holding corporations immediately after the distribution. The second exception applies to certain distributions of stock of a domestic controlled corporation where five or fewer individuals or corporations directly own all of the outstanding stock (exclusive of directors' qualifying shares) of the distributing domestic corporation immediately before the distribution. The third exception applies to certain distributions of stock of a domestic controlled corporation by a domestic distributing corporation that is publicly traded where the foreign distributee owns five percent or less of the class of stock with respect to which the distribution is being made. A rule for determining the distributee's basis in the stock received is also included.

Distributions of the stock of a passive foreign investment company (as defined in section 1296(a)) will be subject to regulations to be issued under section

1291(f). Distributions of the stock of a passive foreign investment company before the effective date of those regulations are subject to the provisions of § 1.367 (e)–1T, and any gain recognized is subject to the provisions of section 1291 *et seq.*

Distributions Described in Section 367(e)(2)

The distributing corporation in a complete liquidation described in section 332(a) normally does not recognize gain or loss under section 337(a) on the distribution of property to a corporation that meets the eighty percent stock ownership requirements of section 332(b). However, gain may be recognized pursuant to section 367(e)(2) by the distributing corporation in a section 332 distribution to which section 337 would otherwise apply if the parent corporation is a foreign corporation. Section 367(e)(2) specifically provides that, in the case of any liquidation to which section 332 applies, subsections (a) and (b)(1) of section 337 shall not apply where the eighty percent distributee is a foreign corporation. Thus, gain recognition is required by the distributing domestic or foreign corporation. However, section 367(e)(2) also provides that subsections (a) and (b)(1) of section 337 may apply to a distribution to a foreign corporation if and to the extent regulations so provide.

General Rule for Distributions by a Domestic Corporation Described in Section 367(e)(2)

The regulations provide, in general, that a distributing domestic corporation in a section 332 liquidation shall recognize gain upon the distribution of property to a foreign parent corporation that owns at least eighty percent of the distributing domestic corporation. The regulations then specify the instances in which the distributing domestic corporation is not required to recognize gain on the distribution. These instances include the distribution of certain property which continues to be used in the conduct of a trade or business within the United States, the distribution of U.S. real property interests, and the distribution of property to certain foreign parent corporations covered by a transitional treaty rule. A rule for determining the distributee's basis in the property distributed is also included.

General Rule for Distribution by a Foreign Corporation Described in Section 367(e)(2)

The regulations provide, in general, that a distributing foreign corporation in a section 332 liquidation shall not recognize gain (or loss) upon the distribution of property to a foreign parent corporation that owns at least eighty percent of the stock of the distributing foreign corporation. However, recognition of gain is required on the distribution of property formerly or then used in the conduct of a trade or business within the United States by the distributing foreign corporation if the distributee foreign parent corporation will not continue to use the property in the conduct of a trade or business within the United States. A cross-reference is made to the regulations under section 897 for the treatment of the distribution or exchange of U.S. real property interests. Rules for determining the distributee's basis in the property are also provided.

Distributions of the stock of a passive foreign investment company (as defined in section 1296(a)) will be subject to regulations to be issued under section 1291(f). Distributions of the stock of a passive foreign investment company before the effective date of those regulations are subject to the provisions of § 1.367(e)–2T, and any gain recognized is subject to the provisions of section 1291 *et seq.*

It is noted that this regulation does not impose a filing requirement under section 6038B for distributions under section 367(e).

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 is hereby certified that these rules will not have a significant impact on a substantial number of small entities. Few small entities would be affected by these regulations. A regulatory flexibility analysis, therefore, is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these regulations is Charles P. Besecky of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of substance and style.

List of Subjects

26 CFR 1.301–1 to 1.385–6

Income taxes, Corporations, Corporate distributions, Corporate adjustments and reorganizations.

26 CFR Part 7

Income taxes, Tax Reform Act of 1976.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1, 7 and 602 are amended as follows:

Income Tax Regulations

PART 1—[AMENDED]

Paragraph 1. The authority for part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * * Sec. 1.367(e)–1T is also issued under 26 U.S.C. 367(e)(1). Sec. 1.367(e)–2T is also issued under 26 U.S.C. 367(e)(2). * * *

Par. 2. Section 1.367(a)–1T is amended by redesignating existing paragraph (e) as paragraph (g), and by adding the following new paragraphs (e) and (f).

§ 1.367(a)–1T Transfers to foreign corporations subject to section 367(a): In general (Temporary).

* * * * *

(e) *Close of taxable year in certain section 368(a)(1)(F) reorganizations.* If a domestic corporation is the transferor corporation in a reorganization described in section 368(a)(1)(F) after March 30, 1987, in which the acquiring corporation is a foreign corporation, then the taxable year of the transferor corporation shall end with the close of the date of the transfer and the taxable year of the acquiring corporation shall end with the close of the date on which the transferor's taxable year would have ended but for the occurrence of the transfer. With regard to the consequences of the closing of the taxable year, see section 381 and the regulations thereunder.

(f) *Exchanges under sections 354(a) and 361(a) in certain section 368(a)(1)(F) reorganizations.* In every reorganization under section 368(a)(1)(F), where the transferor corporation is a domestic corporation and the acquiring corporation is a foreign corporation, there is considered to exist—

(1) A transfer of assets by the transferor corporation to the acquiring corporation under section 361(a) in exchange for stock of the acquiring corporation and the assumption by the acquiring corporation of the transferor corporation's liabilities;

(2) A distribution of the stock (or stock and securities) of the acquiring corporation by the transferor corporation to the shareholders (or shareholders and security holders) of the transferor corporation; and

(3) An exchange by the transferor corporation's shareholders (or shareholders and security holders) of the stock of the transferor corporation for stock (or stock and securities) of the acquiring corporation under section 354(a).

For this purpose, it shall be immaterial that the applicable foreign or domestic law treats the acquiring corporation as a continuance of the transferor corporation.

* * * * *

Par. 3. The following new §§ 1.367(e)–0T, 1.367(e)–1T, and 1.367(e)–2T are added immediately after § 1.367(d)–1T:

§ 1.367(e)–0T Treatment of distributions or liquidations under section 367(e); table of contents (temporary).

This section lists captioned paragraphs contained in §§ 1.367(e)–1T through 1.367(e)–2T, temporary regulations under section 367(e) of the Internal Revenue Code.

§ 1.367(e)–1T Distributions described in section 367(e)(1) (Temporary).

(a) Purpose and scope.
(b) Recognition of gain required.
(1) General rule.
(2) Nonapplication of section 367 principles that provide for exceptions to gain recognition.
(c) Nonrecognition of gain.
(1) Distribution of certain U.S. real property holding corporation stock.
(2) Distribution of certain domestic stock.
(i) Conditions for nonrecognition.
(ii) Required statement.
(iii) Effect of submitting statement.
(iv) Priority of FIRPTA nonrecognition.
(3) Distribution of stock by a publicly traded corporation.
(i) Conditions for nonrecognition.
(ii) Relation to other nonrecognition provisions.
(d) Other consequences.
(1) Distributee basis in stock.
(2) Dividend treatment under section 1248.
(3) Exchange under section 897(e)(1).
(4) Distribution of stock of a passive foreign investment company.
(e) Examples.
(f) Effective date.

§ 1.367(e)–2T Distributions described in section 367(e)(2) (temporary).

(a) Purpose and scope.
(1) In general.
(2) Nonapplicability of section 367(a).
(b) Distribution by a domestic corporation.
(1) Recognition of gain required.
(i) General rule.
(ii) Recognition of losses.
(iii) Distribution of partnership interest.
(A) In general.
(B) Basis adjustments.
(C) Limited partnership interest.
(2) Recognition of gain or loss not required.
(i) Distribution of property used in a United States trade or business.
(A) Conditions for nonrecognition.
(B) Required statement.
(C) Effect of submitting statement.
(ii) Distribution of U.S. real property interests.
(iii) Transitional rule for certain treaty provisions.
(3) Other consequences.
(i) Distributee basis in property.
(ii) Dividend treatment under section 1248.
(iii) Exchange under section 897(e)(1).
(iv) Distribution of stock of a passive foreign investment company.
(v) Carryover of tax attributes.
(4) Examples.
(c) Distribution by a foreign corporation.
(1) Recognition of gain generally not required.
(2) Recognition of gain required.
(i) Property used in a United States trade or business.
(A) In general.
(B) Required statement.
(C) Effect of submitting or failing to submit a statement.
(ii) Property formerly used in a United States trade or business.
(3) Other consequences.
(i) Distributee basis in property.
(ii) Distribution under section 367(b).
(iii) Distribution or exchange of U.S. real property interests.
(iv) Distribution of stock of a passive foreign investment company.
(v) Carryover of tax attributes.
(4) Examples.
(d) Effective date.

§ 1.367(e)–1T Distributions described in section 367(e)(1) (Temporary).

(a) *Purpose and scope.* This section provides rules concerning the recognition of gain by a domestic corporation (the "distributing corporation") on a distribution of stock or securities in a domestic or foreign corporation (the "controlled corporation") under section 355 to a person who is not a United States person. Paragraph (b) of this section states as a general rule that gain recognition is required on the distribution. Paragraph (c) of this section provides exceptions to the gain recognition rule of paragraph (b). Paragraph (d) of this section refers to other consequences of distributions described in this section. Paragraph (e) of this section provides examples of the rules of paragraphs (b), (c), and (d). Finally, paragraph (f) specifies the effective date for the rules of this section. The rules of this section are issued pursuant to the authority conferred by section 367(e)(1).

(b) *Recognition of gain required*—(1) *General rule.* If a domestic corporation makes a distribution of stock or securities of a domestic or foreign corporation to a person who is not a United States person as defined in § 1.367(a)–1T(d)(1) (the "foreign distributee") in a distribution that qualifies under section 355(a), then, except as provided in paragraph (c) of this section, the distributing corporation shall recognize gain (but not loss) on the distribution under section 367(e)(1). The gain recognized by the distributing domestic corporation shall be equal to the excess of the fair market value of the stock or securities distributed to the foreign distributee (as of the time of the distribution) over such corporation's adjusted basis in the stock or securities distributed to the foreign distributee. For purposes of the preceding sentence, the distributing domestic corporation's adjusted basis in each unit of each class of stock or securities distributed to a foreign distributee shall be equal to the corporation's total adjusted basis in all of the units of the respective class of stock or securities held immediately before the distribution, divided by the total number of units of such class of stock or securities held immediately before the distribution. If the distribution otherwise qualifies under section 355, each distributee of the distributing domestic corporation shall be considered to have received the distributed stock in such a distribution even though the distributing corporation recognizes gain on the distribution. Thus, the distributee does not receive a dividend upon the receipt of the stock of the controlled corporation.

(2) *Nonapplication of section 367 principles that provide for exceptions to gain recognition.* The rule of paragraph (b)(1) of this section requires recognition of gain notwithstanding the application of any principles contained in section 367 or the regulations thereunder that provide for exceptions to gain recognition. The only exceptions to the rule of paragraph (b)(1) of this section are contained in paragraph (c) of this section.

(c) *Nonrecognition of gain*—(1) *Distribution of certain U.S. real property holding corporation stock.* Gain shall not be recognized under paragraph (b)(1) of this section by a domestic corporation making a distribution of stock or securities of a domestic controlled corporation to a foreign distributee in a distribution that qualifies under section 355(a) if, immediately after the distribution, both the distributing and the controlled corporations are U.S. real property holding corporations (as defined in section 897(c)(2)). For the treatment of the distribution under section 897, see section 897(e) and § 1.897–6T(a) (1) and (4).

(2) *Distribution of certain domestic stock*—(i) *Conditions for nonrecognition.* Gain shall not be recognized under paragraph (b)(1) of this section by a domestic corporation

making a distribution of stock or securities of a domestic controlled corporation to a foreign distributee in a distribution that qualifies under section 355(a) if each of the following conditions is satisfied:

(A) Five or fewer persons, each of whom is either an individual or a corporation (or an entity treated as a corporation for U.S. tax purposes), directly own 100 percent of the outstanding stock (exclusive of directors' qualifying shares) of the distributing corporation immediately before the distribution.

(B) Immediately before the distribution, at least ninety percent (by value) of the aggregate outstanding stock of the distributing corporation has a holding period of at least two years in the hands of the persons described in paragraph (c)(2)(i)(A). Such holding period shall be determined under section 1223, except that for this purpose section 1223(2) shall only apply if such person acquired such stock in a transaction described in section 381.

(C) If the subject foreign distributee is a foreign corporation, the stock of the distributing corporation held by such foreign distributee immediately before the distribution has a fair market value that is less than 50 percent of the total fair market value of all of the outstanding stock of such foreign distributee immediately before the distribution. For purposes of the preceding sentence, the fair market value of the stock of the foreign distributee shall be determined without regard to any cash, cash items (such as bank deposits or receivables), or marketable securities held by the foreign distributee.

(D) Immediately before the distribution, all of the stock of the distributing corporation owned by the subject foreign distributee has a holding period of at least two years. Such holding period shall be determined under section 1223, except that for this purpose section 1223(2) shall only apply if such person acquired such stock in a transaction described in section 381.

(E) After the distribution, the subject foreign distributee is and continues to be a resident of (if such foreign distributee is an individual), or is incorporated in and continues to be incorporated in (if such foreign distributee is a corporation), a foreign country that maintains an income tax treaty with the United States that contains an information exchange provision.

(F) Immediately after the distribution, the stock of the distributing corporation has a fair market value that is at least equal to the fair market value of the distributed stock (or if stock and securities are distributed, the fair market value of the distributed stock and securities) of the controlled corporation immediately before the distribution.

(G) The separate corporate existence of the distributing corporation (or its domestic successor in a reorganization described in section 368(a)(1)(F)) is maintained for a period of five full taxable years (excluding short taxable years) beginning with the taxable year following the year of the distribution. A domestic successor shall be treated as the distributing corporation for purposes of this paragraph (c)(2) and shall, therefore, succeed to all of the responsibilities of the distributing corporation thereunder.

(H) No later than the last day of each of the five full taxable years of the distributing corporation (excluding short taxable years) after the taxable year of the distribution, the subject foreign distributee provides to the distributing corporation the certificate described in paragraph (c)(2)(ii)(F).

(I) The distributing and controlled corporations attach the statement described in paragraph (c)(2)(ii) of this section to their U.S. income tax returns for the taxable year that includes the distribution.

(ii) *Required statement.* The statement required by paragraph (c)(2)(i)(I) of this section shall be prepared by or on behalf of the distributing corporation and signed under penalties of perjury by an authorized officer of each of the distributing corporation and the controlled corporation, and by each foreign shareholder of the distributing corporation that receives a distribution with respect to which nonrecognition is claimed under paragraph (c)(2). The statement shall set forth the following items:

(A) A declaration that the distribution is one to which the provisions and rules of section 1.367(e)–1T(c)(2) apply.

(B) A description of each shareholder of the distributing corporation (without regard to whether such shareholder is a United States person) including such shareholder's name, address, taxpayer identification number (if any), and residence and citizenship (in the case of an individual) or place of incorporation (in the case of a corporation). Such description must identify the shareholders that are foreign distributees of controlled corporation stock with respect to which there is a claim of nonrecognition under paragraph (c)(2).

(C) A description of the stock in the distributing corporation directly owned immediately before the distribution by each shareholder described in paragraph (c)(2)(ii)(B), including the number or amount of shares, the type of stock, the percentage (by value) that such stock represented of the total stock of the distributing corporation outstanding immediately before the distribution, the date on which such stock was directly acquired by such shareholder, and such shareholder's holding period in respect of such stock (determined according to the provisions of paragraph (c)(2)(i)(B)).

(D) A description of the stock of the distributing and controlled corporations directly owned immediately after the distribution by each shareholder described in paragraph (c)(2)(ii)(B), including the number or amount of shares, the type of stock, and the percentage (by value) that such stock represents of the total stock of the distributing or controlled corporation immediately after the distribution. In the case of the distribution to a foreign distributee of controlled corporation stock with respect to which there is a claim of nonrecognition under paragraph (c)(2), the description must also include the fair market value of such stock at the time of its distribution, a summary of the method (including appraisals, if any) used for determining such value, and the distributing corporation's adjusted basis in such stock immediately prior to the distribution (computed according to the provisions of paragraph (b)(1) of this section).

(E) A declaration of the total fair market value of the stock of the distributing corporation immediately after the distribution, the total fair market value of the distributed stock (or, if stock and securities are distributed, the fair market value of the distributed stock and securities) of the controlled corporation immediately before the distribution, and a summary of the method (including appraisals, if any) used for determining such values.

(F) A declaration by the distributing corporation and each foreign distributee of controlled corporation stock with respect to which nonrecognition is claimed under paragraph (c)(2) that, no later than the last day of each of the five full taxable years of the distributing corporation after the taxable year of the distribution, such distributee will certify to the distributing corporation, in writing and under penalties of perjury, that as of the certification date:

(*1*) Such shareholder directly owns all of the stock of the distributing and controlled corporations directly owned by such person immediately after the distribution and all of the stock of the distributing and controlled corporations

acquired from either of the corporations since the distribution, and

(2) Such shareholder has directly owned all of such stock without interruption since the date of the distribution or acquisition.

(G) A declaration by the distributing corporation that it shall attach the annual certifications described in the preceding subdivision (F) to its U.S. income tax return for each year during the prescribed five full taxable year period.

(H) A declaration that the distributing corporation agrees to extend the statute of limitations on assessments and collections (under section 6501) with respect to the distribution of the stock and securities of the controlled corporation until 3 years after the filing of its return for the fifth full taxable year following the taxable year that includes the distribution.

(iii) *Effect of submitting statement.* By claiming nonrecognition under this paragraph (c)(2), the distributing corporation agrees to be subject to the rules of this paragraph (c)(2)(iii).

(A) If:

(1) A foreign distributee with respect to whose stock there is a claim of nonrecognition under paragraph (c)(2) does not provide to the distributing corporation an annual certificate described in paragraph (c)(2)(ii)(F), or

(2) The distributing corporation knows or has reason to know that such foreign distributee has ceased to own directly (other than by reason of an individual foreign distributee's death) all of the stock or securities in the distributing and controlled corporations described in the certificate prior to the end of the fifth full taxable year of the distributing corporation following the distribution, then the distributing corporation shall file an amended U.S. income tax return for the year of the distribution and recognize all of the gain realized on the distribution of stock and securities to such foreign distributee. Such amended return shall be filed no later than 60 days after the failure to file a certificate, or 60 days after the distributing corporation knows or has reason to know that the requisite direct ownership has ceased.

(B) If the separate corporate existence of the distributing corporation is not maintained as provided in paragraph (c)(2)(i)(G), then the distributing corporation shall file an amended U.S. income tax return for the year of the distribution and shall recognize the gain realized on the distribution of all of the controlled corporation stock or securities with respect to which there was a claim of nonrecognition under paragraph (c)(2) and with respect to which an amended return has not previously been filed under paragraph (c)(2)(iii)(A). Such amended return shall be filed no later than 60 days after adoption of a resolution or agreement providing for the liquidation or other termination or dissolution of the distributing corporation.

(C) If additional tax is required to be paid by the distributing corporation for the year of the distribution, then interest must be paid by the distributing corporation on that amount at the rates determined under section 6621 with respect to the period between the date that was prescribed for filing the distributing corporation's original U.S. income tax return for the year of the distribution and the date on which the additional tax for that period is paid.

(iv) *Priority of FIRTPA nonrecognition.* If the distribution of the stock and securities of the controlled corporation also qualifies for nonrecognition under paragraph (c)(1), then the distributing corporation shall be entitled to nonrecognition under paragraph (c)(1) and not under this paragraph (c)(2).

(3) *Distribution of stock by a publicly traded corporation*—(i) *Conditions for nonrecognition.* Gain shall not be recognized under paragraph (b)(1) of this section by a domestic corporation making a distribution of stock or securities of a domestic controlled corporation to a foreign distributee in a distribution that qualifies under section 355(a) if each of the following conditions is satisfied:

(A) Classes of stock of the distributing corporation that are regularly traded on an established securities market, as defined in § 1.897-1(m) (1) and (3), located in the United States represent at least 80 percent of the total value of all classes of outstanding stock of the distributing corporation. Stock is considered to be regularly traded if it is regularly quoted by brokers or dealers making a market in such interests. A broker or dealer is considered to make a market only if the broker or dealer holds himself out to buy or sell interests in the stock at the quoted price.

(B) Stock of the domestic controlled corporation with a value of more than 80 percent of the outstanding stock of such corporation is distributed with respect to one or more of the classes of the outstanding stock of the distributing corporation that are regularly traded on an established securities market.

(C) The distributing corporation does not know or have reason to know that the subject foreign distributee owns, directly or indirectly, more than five percent (by value) of the shares in the class of the distributing corporation stock with respect to which the stock of the domestic controlled corporation is distributed. For example, a corporation that has received a notice pursuant to the rules or regulations of the Securities and Exchange Commission that a foreign shareholder owns six percent of the class of its stock, with respect to which there is a distribution, knows that such foreign distributee owns more than five percent of such class of stock.

(ii) *Relation to other nonrecognition provisions.* If the distribution of the stock and securities of the controlled corporation also qualifies for nonrecognition under paragraph (c)(1), then the distributing corporation shall be entitled to nonrecognition under paragraph (c)(1) and not under paragraph (c)(3).

(d) *Other consequences*—(1) *Distributee basis in stock.* Except where § 1.897-6T(a)(4) causes gain recognition by the distributee, the basis of the distributed domestic or foreign corporation stock in the hands of the distributee who is not a United States person shall be the basis of the distributed stock determined under section 358 without any increase for any gain recognized by the domestic corporation on the distribution.

(2) *Dividend treatment under section 1248.* With respect to the treatment as a dividend of a portion of the gain recognized by the domestic corporation on the distribution of the stock of certain foreign corporations, see section 1248(a) and the regulations thereunder.

(3) *Exchange under section 897(e)(1).* With respect to the treatment under section 897(e)(1) of a foreign distributee on the receipt of stock or securities in a domestic or foreign corporation where the foreign distributee's interest in the distributing domestic corporation is a United States real property interest, see section 897(e)(1) and § 1.897-6T(a) (1) and (4).

(4) *Distribution of stock of a passive foreign investment company.* [Reserved]

(e) *Examples.* The rules of paragraphs (b), (c), and (d) of this section may be illustrated by the following examples.

Example (1). (i) FC, a Country X corporation, owns all of the outstanding stock of DC1, a domestic corporation, that owns all of the outstanding stock of DC2, a domestic corporation. The fair market value of the DC1 stock is 300x, and FC has a basis in the DC1 stock of 100x. The fair market value of the DC2 stock is 180x, and DC1 has a basis in the DC2 stock of 40x. Neither DC1 nor DC2 is a U.S. real property holding corporation. Country X does not maintain an income tax treaty with the United States.

(ii) In a transaction qualifying as a distribution of stock of a controlled

corporation under section 355(a), DC1 distributes all of the stock of DC2 to FC. After the distribution, the DC1 stock has a fair market value of 120x.

(iii) Under paragraph (b)(1) of this section, DC1 recognizes gain of 140x, which is the difference between the fair market value (180x) and the basis (40x) of the stock distributed. Under paragraph (d)(1) of this section and section 358, FC takes a basis of 40x in the DC1 stock, and a basis of 60x in the DC2 stock.

Example (2). (i) C, a citizen and resident of Country F, owns all of the stock of DC, a U.S. real property holding corporation. The fair market value of the DC stock is 500x, and C has a basis in the DC stock of 100x.

(ii) In a transaction qualifying as a distribution of stock of a controlled corporation under section 355(a), DC distributes to C all of the stock of FC, a foreign corporation that is not a passive foreign investment company. FC is not a U.S. real property holding corporation and has not made an election under section 897(i) to be treated as a domestic corporation for purposes of section 897. The FC stock has a fair market value of 200x, and DC has a basis in the FC stock of 180x. After the distribution, the DC stock has a fair market value of 300x.

(iii) Under paragraph (b) of this section, DC recognizes gain of 20x which is the difference between the fair market value (200x) and the basis (180x) of the stock distributed. In regard to the treatment of DC under section 1248, see section 1248(a) and the regulations thereunder.

(iv) Under section 897(e) and § 1.897–6T (a)(4), C is considered to have exchanged DC stock with a fair market value of 200x and an adjusted basis of 40x for FC stock with a fair market value of 200x. Because FC is not a U.S. real property holding corporation, and its stock is not a U.S. real property interest, C must recognize gain of 160x under section 897 (a) on the distribution. C takes a basis of 200x in the FC stock because there is a recognition exchange under the rules of § 1.897–6T(a)(4). C's basis in the DC stock is reduced to 60x pursuant to section 358.

Example (3). (i) Assume the same facts as in Example (2), except that (instead of FC stock) stock of DC2, a domestic corporation, is distributed to C, and that DC and DC2 are U.S. real property holding corporations immediately after the distribution.

(ii) Under paragraph (c)(1) of this section, DC does not recognize gain on the distribution of the DC2 stock because DC and DC2 are U.S. real property holding corporations immediately after the distribution.

(iii) Under section 897 (e) and § 1.897–6T (a)(4), C is considered to have exchanged DC stock with a fair market value of 200x and an adjusted basis of 40x for DC2 stock with a fair market value of 200x. Because DC2 is a U.S. real property holding corporation, and its stock is a U.S. real property interest, C does not recognize any gain under section 897(e) on the distribution. C takes a basis of 40x in the DC2 stock, and its basis in the DC stock is reduced to 60x pursuant to section 358.

Example (4). (i) C, a citizen and resident of Country F, has owned all of the stock of DC1, a domestic corporation, for six years. The fair market value of the DC1 stock is 800x, and C has a basis in the DC1 stock of 600x. Country F maintains an income tax treaty with the United States that includes an information exchange provision.

(ii) In a transaction qualifying as a distribution of stock of a controlled corporation under section 355(a), DC1 distributes to C all of the stock of DC2, a domestic corporation. The DC2 stock has a fair market value of 200x, and DC1 has a basis in the DC2 stock of 100x. After the distribution, the DC1 stock has a fair market value of 600x. C will continue to be a resident of Country F after the distribution. The separate corporate existence of DC1 will be maintained for a period of at least five full taxable years beginning with the taxable year following the year of the distribution, with C as the sole shareholder.

(iii) Under paragraph (c)(2) of this section, DC1 does not recognize gain on the distribution of the DC2 stock if DC1, DC2, and C comply with all of the provisions of paragraph (c)(2) of this section. C takes a basis of 150x in the DC2 stock, and C's basis in the DC1 stock is reduced to 450x pursuant to section 358.

Example (5). (i) All of the outstanding common stock of DC, a domestic corporation, is regularly traded on an established securities market located in the United States. No other stock of DC is outstanding. None of the foreign shareholders of DC, directly or indirectly, owns more than five percent of the common stock of DC.

(ii) In a transaction qualifying as a distribution of stock of a controlled corporation under section 355(a), DC distributees all of the stock of DS, a domestic corporation, to the common shareholders of DC. The stock of DS has appreciated in the hands of DC.

(iii) Under paragraph (c)(3) of this section, DC does not recognize gain on the distribution of the DS stock to any foreign distributee because the requirements of that paragraph have been met. The basis of the shareholders in the DC and DS stock is determined pursuant to section 358.

(f) *Effective date.* This section shall be effective for distributions occurring after February 15, 1990.

§ 1.367(e)–2T Distributions described in section 367(e)(2) (Temporary).

(a) *Purpose and scope*—(1) *In general.* This section provides rules concerning the recognition of gain by a corporation on its distribution to a foreign corporation of property in a complete liquidation to which section 332 applies. Paragraph (b)(1) of this section states as a general rule that gain recognition is required when a domestic corporation makes a distribution of property in complete liquidation under section 332 to a foreign corporation that meets the stock ownership requirements of section 332(b) with respect to stock in the domestic corporation. Paragraph (b)(2) of this section provides the only exceptions to the gain recognition rule of paragraph (b)(1). Paragraph (b)(3) of this section refers to other consequences of distributions described in paragraphs (b)(1) and (2). Paragraph (c)(1) of this section states as a general rule that gain recognition is not required when a foreign corporation makes a distribution of property in complete liquidation under section 332 to another foreign corporation that meets the stock ownership requirements of section 332(b) with respect to stock in the distributing foreign corporation. Paragraph (c)(2) of this section provides exceptions to the nonrecognition rule of paragraph (c)(1). Paragraph (c)(3) of this section refers to other consequences of distributions described in paragraphs (c)(1) and (2). Examples of the rules of this section are provided in paragraphs (b)(4) and (c)(4) of this section. Finally, paragraph (d) specifies the effective date for the rules of this section. The rules of this section are issued pursuant to the authority conferred by section 367(e)(2).

(2) *Nonapplicability of section 367(a).* Section 367(a) shall not apply to a complete liquidation described in section 332 by a domestic corporation into a foreign corporation that meets the stock ownership requirements of section 332(b) and that is subject to section 367(e)(2) or is described in paragraph (b)(2)(iii) of this section.

(b) *Distribution by a domestic corporation*—(1) *Recognition of gain required*—(i) *General rule.* If a domestic corporation makes a distribution of property in a complete liquidation under section 332 to a foreign corporation that meets the stock ownership requirements of section 332(b) with respect to stock in the domestic corporation, then, except as provided in paragraph (b)(2) of this section, section 337 (a) and (b)(1) shall not apply and the distributing domestic corporation shall recognize gain on the distribution of the item of property under section 367(e)(2). The gain recognized by the domestic corporation shall be equal to the excess of the fair market value of each such item of property distributed over its adjusted basis. Except as provided in paragraphs (b)(2)(iii) and (d) of this section, the recognition of gain required under this paragraph is not prohibited by any treaty to which the United States is a party.

(ii) *Recognition of losses.* If paragraph (b)(1)(i) of this section would apply to a distribution of an item of property but for the fact that the distributing domestic corporation realizes a loss on the distribution of such item of property, then the distributing domestic corporation shall recognize the loss realized on such distribution. However,

such loss shall be recognized only to the extent that (A) the total amount of capital losses recognized on such distributions does not exceed the total amount of capital gains recognized by the distributing domestic corporation pursuant to paragraph (b)(1)(i), and (B) the total amount of ordinary losses recognized on such distributions does not exceed the total amount of ordinary income recognized by the distributing domestic corporation pursuant to paragraph (b)(1)(i). Notwithstanding any other provision of this paragraph, losses shall be recognized under this section only on property that the distributing domestic corporation did not acquire within the five year period ending on the date of the liquidation through a capital contribution, a liquidation under section 332, or an exchange under section 351(a) or 361(a). If, pursuant to the rules of this paragraph (b)(1)(ii), only a portion of the capital loss or ordinary loss on the property distributed is recognized because the aggregate capital loss exceeds the aggregate capital gain or the aggregate ordinary loss exceeds the aggregate ordinary gain of the distributing corporation, then the capital loss (and the ordinary loss) recognized shall be treated as being recognized on a pro rata basis with respect to each such capital or ordinary property distributed.

(iii) *Distribution of partnership interest*—(A) *In general.* If a domestic corporation distributes an interest as a partner in a partnership (whether foreign or domestic) in a distribution described in paragraph (b)(1)(i) of this section, then for purposes of applying this section the domestic corporation shall be treated as having distributed a proportionate share of the property of the partnership. Accordingly, the applicability of the nonrecognition rules of paragraph (b)(1) (i) and (ii) and of any exception to recognition provided in this section shall be determined with reference to the property of the partnership rather than to the partnership interest itself. Where the property of the partnership includes an interest in a lower-tier partnership the applicability of any exception with respect to the interest in the lower-tier partnership shall be determined with reference to the property of the lower-tier partnership. In the case of multiple tiers of partnerships, the applicability of an exception shall be determined with reference to the property of the lowest-tier partnership in the partnership chain. A domestic corporation's proportionate share of partnership property shall be determined under the rules and principles of sections 701 through 761 and the regulations thereunder.

(B) *Basis adjustments.* The foreign corporation's basis in the distributed partnership interest shall be equal to the distributing domestic corporation's basis in such partnership interest immediately prior to the distribution, increased by the amount of gain and reduced by the amount of loss recognized by the domestic corporation on the distribution of the partnership interest. Solely for purposes of sections 743 and 754, the foreign corporation shall be treated as having purchased the partnership interest for an amount equal to the foreign corporation's adjusted basis therein.

(C) *Limited partnership interest.* The distribution by a domestic corporation of a limited partnership interest that is regularly traded on an established securities market shall not be subject to the rules of this paragraph (b)(1)(iii). Instead, the distribution of such an interest shall be treated in the same manner as a distribution of stock. For purposes of this section, a limited partnership interest is an interest as a limited partner in a partnership that is organized under the laws of any state of the United States or the District of Columbia. Whether such an interest is regularly traded on an established securities market shall be determined under the provisions of § 1.367(a)–1T(c)(3)(ii)(D).

(2) *Recognition of gain or loss not required*—(i) *Distribution of property used in a United States trade or business*—(A) *Conditions for nonrecognition.* The domestic corporation shall not recognize gain or loss under paragraph (b)(1) of this section on its distribution of property (including inventory) used by the domestic corporation in the conduct of a trade or business within the United States if—

(*1*) The distributee foreign corporation is not a controlled foreign corporation, as defined in section 957(a) or section 953(c) (including a corporation that would be treated as a controlled foreign corporation under section 953(c) but for the provisions of section 953(c)(3)), at the time of the distribution of property;

(*2*) The distributee foreign corporation, for the ten-year period beginning on the date of the distribution of such property, uses the property in the conduct of a trade or business in the United States (or, in the case of inventory, continues to hold the property for sale to customers until disposed of); and

(*3*) The domestic and foreign corporations attach the statement described in paragraph (b)(2)(i)(B) to their U.S. income tax returns for the year of the distribution (or to an amended return filed no later than July 16, 1990).

This nonrecognition rule does not apply to the distribution of intangibles described in section 936(h)(3)(B). Property is considered used by a foreign corporation in the conduct of a trade or business in the United States only if any income from the use of the property and any income or gain from the sale or exchange of the property would be subject to taxation under section 882(a) as effectively connected income. For purposes of this paragraph (b)(2)(i)(A), stock held by a dealer as inventory or for sale in the ordinary course of its trade or business shall be treated as inventory and not as stock in the hands of both the domestic corporation and the distributee foreign corporation. If a distributing domestic corporation that would otherwise qualify for nonrecognition on the distribution of such property under this paragraph (b)(2)(i) fails to file the statement properly or files a statement that does not comply with the requirements of paragraph (b)(2)(i)(B) of this section, the Commissioner may, nevertheless, in his discretion treat the distributing domestic corporation as if it had, in fact, met all the requirements of paragraph (b)(2)(i)(B) if such treatment is necessary to prevent the taxpayer from otherwise deriving a tax benefit by such failure.

(B) *Required statement.* The statement required by paragraph (b)(2)(i)(A) shall be prepared by the distributing domestic corporation and signed under penalties of perjury by an authorized officer of each of the distributing domestic and distributee foreign corporations. The statement shall set forth the following items:

(*1*) A declaration that the distribution to the foreign corporation is one to which the rules of § 1.367(e)–2T(b)(2)(i) apply.

(*2*) A description of all of the property distributed by the domestic corporation (whether or not the property qualifies for nonrecognition). Such description shall identify the property that continues to be used by the distributee foreign corporation in the conduct of a trade or business within the United States, including the location, adjusted basis, estimated fair market value, a summary of the method (including appraisals if any) used for determining such value, and the date of distribution of such items of property.

(*3*) An identification of the distributee foreign corporation, including its name and address, taxpayer identification number (if any), residence and place of incorporation.

(4) With respect to property entitled to nonrecognition pursuant to paragraph (b)(2)(i), a declaration by the distributee foreign corporation that it irrevocably waives any right under any treaty (whether or not currently in force at the time of the liquidation) to sell or exchange any item of such property without U.S. income taxation or at a reduced rate of taxation, or to derive income from the use of any item of such property without U.S. income taxation or at a reduced rate of taxation.

(5) An agreement by the distributing domestic corporation and the distributee foreign corporation to extend the statute of limitations on assessments and collections (under section 6501) with respect to the distribution of each item of property until three years after the date on which all such items of property have ceased to be used in a trade or business within the United States pursuant to paragraph (b)(2)(i)(C)(1), but in no event shall the extension be for a period longer than 13 years from the filing of the original U.S. income tax return for the taxable year of the last distribution of any such item of property. If, however, the distributing domestic corporation files an amended return pursuant to the provisions of paragraph (b)(2)(i)(C), other than an amended return filed for the substitution of property exchanged under section 1031 or converted under section 1033, the agreement to extend the statute of limitations on assessments and collections as to the property with respect to which gain is included on the amended return will not extend beyond three years (except as otherwise provided by section 6501) after the filing of the amended tax return.

(C) *Effect of submitting statement.* By the distributing domestic corporation's claiming nonrecognition under this paragraph (b)(2)(i), the distributing domestic corporation and the distributee foreign corporation agree to be subject to the rules of this paragraph (b)(2)(i)(C).

(1) If, within the ten year period from the date of distribution, any item of property entitled to nonrecognition under paragraph (b)(2)(i)(A) ceases to be used by the distributee foreign corporation in the conduct of a trade or business in the United States for any reason (including but not limited to the sale or exchange of such property or the removal of the property from conduct of the trade or business), then, except as provided in paragraph (b)(2)(i)(C)(3), the distributee foreign corporation shall cause to be filed on behalf of the domestic corporation an amended U.S. income tax return for the year of the distribution of such item of property, in which return the domestic corporation recognizes the gain (but not loss) realized but not recognized upon the initial distribution of such item of property. On the amended return filed pursuant to paragraph (b)(2)(i)(C)(1), the distributing domestic corporation may use any losses (or credits) existing in the year of the distribution, that were otherwise available in that year and not used in another year, to offset the gain (or tax thereon) required to be recognized under such paragraph.

(2) The amended return required by paragraph (b)(2)(i)(C)(1) shall be filed no later than the due date (including extensions) for the return of the distributee foreign corporation for the taxable year in which the property ceases to be used by the distributee foreign corporation in the conduct of a trade or business in the United States.

(3) If property ceases to be used by the distributee foreign corporation in the conduct of a trade or business in the United States by reason of a disposition of such property, and either (*i*) a loss is recognized in whole on such disposition, or (*ii*) a gain is recognized in whole and the distributee foreign corporation reports the full amount of such gain on its timely filed U.S. tax return for the year of the disposition, then the distributing domestic corporation shall not be required to recognize any gain in respect of the distribution of such property on an amended return for the year of the distribution. If a gain is recognized in whole on the disposition of the property and the distributee foreign corporation does not report the full amount of such gain on a timely filed U.S. tax return for the year of the disposition, then the distributing domestic corporation shall be required to recognize and include in income on an amended return for the year of the distribution the full amount of gain realized by such domestic corporation on the distribution of such property. If the domestic corporation is required to recognize gain in the year of the distribution, the foreign corporation shall, nonetheless, be required to recognize any gain realized on the disposition of the property according to generally applicable principles, but the basis of the property in the hands of the foreign corporation shall be adjusted to reflect the recognition of gain by the domestic corporation. Thus, if the property ceases to be used in the active conduct of a trade or business in the United States in a transaction in which gain is recognized, and the distributee foreign corporation includes in income the full amount of such gain on a timely filed return for the taxable year in which gain is recognized, then no amended return shall be required to be filed in respect of such property by the distributing domestic corporation.

(4) For purposes of this paragraph (b)(2)(i)(C), property shall not be considered as no longer used in the conduct of a trade or business in the United States if exchanged for, or involuntarily converted into, similar property used in the conduct of a trade or business in the United States, to the extent such exchange or conversion qualifies for nonrecognition under section 1031 or 1033, or distributed to another foreign corporation in a liquidation distribution under section 337(a) qualifying for nonrecognition under paragraph (c)(2)(i) of this section. Further, a cessation of use of property in the conduct of a trade or business in the United States shall not include the abandonment or disposal of essentially worthless or obsolete property. If the distributee foreign corporation exchanges the property under section 1031 for, or converts the property under section 1033 into similar property used in the conduct of a trade or business in the United States, then the domestic corporation and the distributee foreign corporation must file amended returns for the year of the distribution of such property from the domestic corporation to the distributee foreign corporation, in order to substitute on the statement that was required by paragraph (b)(2)(i)(B) the property received in place of the property exchanged or converted. If the distributee foreign corporation distributes the property in a liquidation distribution under section 337(a) qualifying for nonrecognition under paragraph (c)(2)(i), then the rules of such paragraph shall apply to the distribution.

(5) If additional tax is required to be paid by the distributing corporation for the year of a liquidating distribution, then interest must be paid on that amount at the rates determined under section 6621 with respect to the period between the date that was prescribed for filing the distributing domestic corporation's U.S. income tax return for the year of the distribution and the date on which the additional tax for that year is paid.

(6) The distributee foreign corporation, as successor in interest and liability to the distributing domestic corporation, shall be jointly and severally liable for any tax owed by the distributing domestic corporation as a result of the application of paragraph (b)(2)(i), and shall succeed to the distributing domestic corporation's agreement to extend the statute of

limitations and collections under section 6561.

(7) The distributee foreign corporation shall attach a statement to its U.S. income tax return for each year after the liquidation of the distributing domestic corporation. The statement shall identify the distributed property that ceased to be used by the distributee foreign corporation in the conduct of a trade or business within the United States during that year (without regard to whether the distributing domestic corporation was required to file an amended return as a result of such disposition pursuant to paragraph (b)(2)(i)(C)(3) of this section). The requirement to attach such statement to the return shall not apply to any taxable year of the distributee foreign corporation after the final taxable year in which any distributed property is used by such corporation in the conduct of a trade or business within the United States, and in no event shall the requirement apply to a taxable year later than 13 years from the filing of the original U.S. income tax return for the taxable year of the distribution.

(ii) *Distribution of U.S. real property interests.* The domestic corporation shall not recognize gain under paragraph (b)(1) of this section on the distribution of a U.S. real property interest (other than stock in a former U.S. real property holding corporation which is treated as a U.S. real property interest for five years under § 1.897–5T(c)(1)) in a complete liquidation under section 332(a) to the distributee foreign corporation that meets the stock ownership requirements of section 332(b) with respect to stock in the distributing domestic corporation. See § 1.897–5T(b)(3)(iv)(A). If property distributed by the domestic corporation is a U.S. real property interest that qualifies for nonrecognition under this paragraph (b)(2)(ii) in addition to nonrecognition provided by paragraph (b)(2)(i) of this section, then the distributing domestic corporation shall secure nonrecognition pursuant to this paragraph (b)(2)(ii) and not pursuant to the provisions of paragraph (b)(2)(i).

(iii) *Transitional rule for certain treaty provisions.* A distributing domestic corporation shall not recognize gain or loss under paragraph (b)(1) of this section on the distribution of property in a complete liquidation under section 332(a) to a foreign corporation that meets the stock ownership requirements of section 332(b) with respect to stock in the domestic corporation if—

(A) Such property was distributed by the domestic corporation and received by the foreign corporation after July 31, 1986, and before September 29, 1987 in a distribution that would have been subject to section 367(e)(2) (as enacted by the Tax Reform Act of 1986) but for the provisions of Notice 87–5, 1987–1 C.B. 416, and

(B) The foreign corporation is a resident of a foreign country which had an income tax treaty with the United States in force at the time of the distribution which contained a provision barring discrimination based on capital ownership and the corporation is not denied the benefit of nondiscrimination under that treaty.

See Notice 87–66, 1987–2 C.B. 376.

(3) *Other consequences*—(i) *Distributee basis in property.* The basis of property distributed pursuant to paragraph (b) of this section in the hands of the distributee foreign corporation shall be the basis of such property in the hands of the distributing domestic corporation, increased by the amount of gain (if any), or reduced by the amount of loss (if any), recognized by the domestic corporation on the distribution of each of the respective properties pursuant to paragraph (b)(1) of this section.

(ii) *Dividend treatment under section 1248.* With respect to the treatment as a dividend of a portion of the gain recognized by the domestic corporation on the distribution of the stock of certain domestic and foreign corporations, see section 1248 (a) and (e) and the regulations thereunder. With respect to the treatment as a dividend of a portion of the gain realized but not otherwise recognized under paragraph (b)(1) of this section by the domestic corporation on the distribution of the stock of a foreign corporation (including a foreign corporation, the stock of which is a U.S. real property interest, because such corporation has in effect a valid election under section 897(i)), see section 1248(f) and the regulations thereunder.

(iii) *Exchange under section 897(e)(1).* With respect to the treatment under section 897(e)(1) of a distributee foreign corporation whose interest in the distributing domestic corporation is a U.S. real property interest, see § 1.897–5T(b)(3)(iv)(A).

(iv) *Distribution of stock of a passive foreign investment company.* [Reserved]

(v) *Carryover of tax attributes.* In regard to the carryover of certain tax attributes from the domestic corporation to the distributee foreign corporation, see section 381 and the regulations thereunder.

(4) *Examples.* The rules of this paragraph (b) may be illustrated by the following examples.

Example (1). (i) FC, a Country X corporation, owns all of the outstanding stock of DC, a domestic corporation. All of the property of DC has appreciated in value and is used in the conduct of a trade or business in Country X. None of the DC property is used in connection with the conduct of a trade or business within the United States. In a liquidation under section 332, DC distributes all of its property to FC.

(ii) Under paragraph (b)(1) of this section, DC recognizes gain on the distribution of its property to FC. FC takes a basis in each property equal to DC's basis in the property increased by the amount of any gain recognized by DC on the distribution of the property.

Example (2). (i) FC, a Country X corporation that is not a controlled foreign corporation, owns all of the outstanding stock of DC, a domestic corporation. DC owns Parcel P (a U.S. real property interest), equipment used in the conduct of a trade or business in the United States, and all of the stock in DC1, a domestic corporation, and FS, a foreign corporation that is not a passive foreign investment company. All of the property has appreciated in value since acquired by DC. DC, DC1, and FS have never been U.S. real property holding corporations.

(ii) DC distributes all of its property to FC in complete liquidation under section 332 on March 1, 1988. Beginning immediately after the distribution of the equipment, FC uses the equipment in the conduct of a trade or business in the U.S.

(iii) Under paragraph (b)(2)(ii) of this section, DC does not recognize gain on the distribution of Parcel P. If DC and FC comply with the requirements of paragraph (b)(2)(i) of this section, DC will not recognize gain on the distribution of the equipment, because FC uses the equipment in the conduct of a U.S. trade or business immediately after the distribution. DC must recognize gain pursuant to paragraph (b)(1) of this section on the distribution of the stock of DC1 and FS because there is no exception from gain recognition for the liquidating distribution of stock that is not held by the distributing corporation for sale to customers in the ordinary course or as inventory unless the corporation the stock of which is being distributed is a U.S. real property holding corporation. In regard to the treatment of DC under section 1248, see, however, section 1248 (a) and (e) and the regulations thereunder.

(iv) FC takes DC's basis under paragraph (b)(3)(i) of this section in Parcel P and the equipment because no gain is recognized by DC on the distribution of that property. Under paragraph (b)(3)(i) of this section, FC takes DC's basis in the stock of DC1 and FS, increased by the amount of the gain recognized by DC on the respective stocks.

(c) *Distribution by a foreign corporation*—(1) *Recognition of gain generally not required.* If a foreign corporation makes a distribution of property in complete liquidation under section 332 to another foreign corporation that meets the stock ownership requirements of section

332(b) with respect to stock in the distributing foreign corporation, then, except as provided in paragraph (c)(2) of this section, section 337 (a) and (b)(1) shall apply and the distributing foreign corporation shall not recognize gain (or loss) on the distribution under section 367(e)(2). If a distributing foreign corporation distributes an interest as a partner in a partnership (whether foreign or domestic), then such corporation shall be treated as having distributed a proportionate share of the property of the partnership in accordance with the principles of paragraph (b)(1)(iii) of this section.

(2) *Recognition of gain required*—(i) *Property used in a United States trade or business*—(A) *In general.* A foreign corporation (including a corporation that has made an effective election under section 897(i)) that makes a distribution of property in complete liquidation under section 332 to another foreign corporation that meets the stock ownership requirements of section 332(b) with respect to the stock in the distributing foreign corporation shall recognize gain on the distribution of any property (other than U.S. real property interests) used by the distributing foreign corporation at the time of the liquidation in the conduct of a trade or business within the United States unless the distributee foreign corporation for a ten-year period continues to use such property in the conduct of a trade or business within the United States, and the distributing and distributee foreign corporations attach the statement described in paragraph (c)(2)(i)(B) to their U.S. income tax returns for their taxable years that include the distribution. However, this paragraph (c)(2)(i)(A) shall not apply if all of the following conditions exist.

(*1*) At the time of the distribution, the distributing and the distributee foreign corporations are controlled foreign corporations as defined in section 957 (a) or (b) or section 953(c) (including a corporation that would be treated as a controlled foreign corporation under section 953(c) but for the provisions of section 953(c)(3));

(*2*) The distributee foreign corporation uses such property in the conduct of a trade or business within the United States immediately after the distribution;

(*3*) There was no prior liquidation subject to section 367(e)(2) of a corporation into the distributing corporation (or a predecessor corporation) under paragraph (b)(2)(i) or this paragraph (c)(2)(i) (other than a controlled foreign corporation into another controlled foreign corporation); and

(*4*) The distributee foreign corporation is not entitled to benefits under a comprehensive income tax treaty, but if the distributing foreign corporation (or predecessor corporation) was entitled to benefits under a comprehensive income tax treaty, then the distributee foreign corporation may (but need not) be entitled to benefits under a comprehensive income tax treaty.

(B) *Required statement.* The statement required by paragraph (c)(2)(i)(A) shall be prepared by or on behalf of the distributing foreign corporation and signed under penalties of perjury by an authorized officer of each of the distributing and distributee foreign corporations, and shall be identical to the statement described in paragraph (b)(2)(i)(B), except that "§ 1.367(e)–2T(c)(2)(i)" shall be substituted for references to "§ 1.367(e)–2T(b)(2)(i)" and the term "distributing foreign corporation" shall be substituted for either the term "domestic corporation" or the term "distributing domestic corporation" each time it appears. References in the rules of paragraph (b)(2)(i)(B) to various rules in paragraph (b) shall be applied as if such references were to this paragraph (c). However, the distributee foreign corporation shall not be required to waive its income tax treaty benefits as required by § 1.367(e)–2T(b)(2)(i)(B)(*4*) unless the distributing foreign corporation was required to waive its treaty benefits under paragraph (b)(2)(i)(B)(*4*) of this section in connection with the distribution of such property in a prior liquidation distribution subject to the provisions of this section; the distributee foreign corporation is entitled to benefits under a treaty to which the distributing foreign corporation was not entitled; or the distributee foreign corporation is incorporated in a country different from the country in which the distributing foreign corporation is incorporated.

(C) *Effect of submitting or failing to submit a statement.* By the distributing foreign corporation's claiming nonrecognition under this paragraph (c)(2)(i), the distributing foreign corporation and the distributee foreign corporation agree to be subject to the rules of this paragraph (c)(2)(i) and the rules of paragraph (b)(2)(i)(C). In applying the rules of paragraph (b)(2)(i)(C), the term "distributing foreign corporation" shall be substituted for either the term "domestic corporation" or the term "distributing domestic corporation" each time it appears. References in the rules of paragraph (b)(2)(i)(C) to various rules in paragraph (b) shall be applied as if such references were to this paragraph (c). However, if a distributing foreign corporation that would otherwise qualify for nonrecognition on the distribution of such property under this paragraph (c)(2)(i) fails to file the statement properly or files a statement that does not comply with the requirements of this paragraph, the Commissioner may, nevertheless, in his discretion treat the distributing foreign corporation as if it had, in fact, met all the requirements of this paragraph if such treatment is necessary to prevent the taxpayer from otherwise deriving a tax benefit by such failure.

(ii) *Property formerly used in a United States trade or business.* A foreign corporation making a distribution of property in complete liquidation under section 332 to another foreign corporation that meets the stock ownership requirements of section 332(b) with respect to stock in the distributing foreign corporation shall recognize gain (but not loss) on the distribution of any property (other than U.S. real property interests) that ceased, in a taxable year beginning after December 31, 1986, and within ten years prior to the date of liquidation, to be used in connection with the conduct of a trade or business within the United States. Section 864(c)(7) shall govern the treatment of any gain recognized on the distribution of assets described in this paragraph as income effectively connected with the conduct of a trade or business within the United States.

(3) *Other consequences*—(i) *Distributee basis in property.* The basis of distributed property in the hands of the distributee foreign corporation shall be the basis of the distributed property in the hands of the distributing foreign corporation, increased by the amount of gain (if any) recognized by the distributing foreign corporation on the distribution of the property. However, the basis of the distributed property in the hands of the distributee foreign corporation shall not exceed the fair market value of such property where the distributing foreign corporation recognizes gain on the distribution under this section and the distributee foreign corporation recognizes gain under section 897(e) or the regulations thereunder. See § 1.897–5T(b)(3)(iv)(B).

(ii) *Distribution under section 367(b).* With respect to the treatment of certain distributee foreign corporations under section 367(b), see § 7.367(b)–5(c).

(iii) *Distribution or exchange of U.S. real property interests.* With respect to the treatment under section 897(d) of a distributing foreign corporation on the distribution of a U.S. real property interest, see § 1.897–5T(c)(2) (i) and (ii). With respect to the treatment under

section 897(e) of the distributee foreign corporation where the distributing foreign corporation has made an election under section 897(i) and the stock of such corporation is treated as a U.S. real property interest, see § 1.897–5T(b)(3)(iv)(B).

(iv) *Distribution of stock of a passive foreign investment company.* [Reserved]

(v) *Carryover of tax attributes.* In regard to the carryover of certain tax attributes from the distributing foreign corporation to the distributee foreign corporation, see section 381 and the regulations thereunder.

(4) *Examples.* The rules of this paragraph (c) may be illustrated by the following examples.

Example (1). (i) FX1, a Country Y corporation, owns all of the outstanding stock of FX2, a Country Y corporation that is not a passive foreign investment company. FX2 owns Parcel P (a U.S. real property interest), Asset #1 that formerly was used by FX2 in its U.S. trade or business, and Asset #2 currently used by FX2 in its U.S. trade or business. Asset #1 ceased to be used in a U.S. trade or business on September 30, 1987. All of the property has appreciated in value since acquired by FX2.

(ii) In a liquidation under section 332, FX2 distributes all of its property to FX1 on December 31, 1989. FX1 uses Asset #2 in the conduct of a trade or business in the United States immediately after the distribution.

(iii) Under paragraphs (c) (1) and (2) of this section, FX2 does not recognize gain under section 367(e)(2) on the distribution of Parcel P. Any gain realized on Parcel P may be subject to taxation under section 897 (d) if certain procedural requirements contained in § 1.897–5T(d)(1)(iii) are not followed. FX2 must recognize gain on the distribution of Asset #1 under paragraph (c)(2)(ii) of this section. Section 864 (c)(7) shall govern the treatment of the gain recognized by FX2 on Asset #1 as income effectively connected with a trade or business in the United States. Because FX2 used and FX1 uses Asset #2 in the conduct of a trade or business in the United States, FX2 will not recognize gain under paragraph (c)(2)(i) of this section on the distribution of Asset #2 if FX1 and FX2 comply with the requirements of that paragraph.

(iv) Under paragraph (c)(3)(i) of this section, FX1 takes FX2's basis in Parcel P and Asset #2 if there is compliance with the requirements. Under paragraph (c)(3)(i) of this section, FX1 takes FX2's basis in Asset #1 increased by the gain recognized.

Example (2). (i) FY1, a Country F corporation, owns all of the outstanding stock of FY2, a Country F corporation that is not a passive foreign investment company. FY2 owns Parcel P (a U.S. real property interest held for investment) and machinery used in its U.S. trade or business. FY2 has made an effective election under section 897(i), and the FY2 stock is treated as a U.S. real property interest.

(ii) In a liquidation under section 332, FY2 distributes all of its property to FY1. FY1 will use the machinery in the conduct of a trade or business in the United States immediately after the distribution.

(iii) Under paragraphs (c) (1) and (2) of this section, FY2 does not recognize gain under section 367(e)(2) on the distribution of Parcel P. Any gain realized on Parcel P may be subject to taxation under section 897(d) if certain procedural requirements contained in § 1.897–5T(d)(1)(iii) are not followed. Because FY2 used and FY1 continues to use the machinery in the conduct of a trade or business in the United States, FY2 does not recognize gain on the distribution of the machinery under paragraph (c)(2)(i) of this section if FY1 and FY2 comply with the requirements of that paragraph.

(iv) Under paragraph (c)(3)(i) of this section, FY1 takes FY2's basis in Parcel P. Under paragraph (c)(3)(i) of this section, FY1 takes FY2's basis in the machinery. See § 1.897–5T(b)(3)(iv)(B) for the treatment of FY1 under section 897 (e).

(d) *Effective date.* This section shall be effective for distributions after July 31, 1986, pursuant to section 337(a) as in effect after the effective dates of the amendments of section 631 of the Tax Reform Act of 1986, except that it shall not apply in the case of any corporation completely liquidated before June 10, 1987, into a corporation organized in a country which then had an income tax treaty with the United States. See section 1006(e)(13) of the Technical and Miscellaneous Revenue Act of 1988 (102 Stat. 3342, Public Law 100–647).

Par. 4. Section 1.381(b)–1(a)(1) is revised to read as follows.

§ 1.381(b)–1 Operating rules applicable to carryovers in certain corporate acquisitions.

(a) *Closing of taxable year*—(1) *In general.* Except in the case of certain reorganizations qualifying under section 368(a)(1)(F), the taxable year of the distributor or transferor corporation shall end with the close of the date of distribution or transfer. With regard to the closing of the taxable year of the transferor corporation in certain reorganizations under section 368(a)(1)(F) involving a foreign corporation after December 31, 1986, see §§ 1.367(a)–1T(e) and 7.367(b)–(e).

Temporary Income Tax Regulations Under the Tax Reform Act of 1976

PART 7—[AMENDED]

Par. 5. The authority for part 7 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 6. Section 7.367(b)–1 is amended by adding the following paragraphs as new paragraphs (e) and (f).

§ 7.367(b)–1 Other transfers.

* * * * *

(e) *Close of taxable year in certain section 368(a)(1)(F) reorganizations.* If a foreign corporation is the transferor corporation in a reorganization described in section 368(a)(1)(F) after March 30, 1987, in which the acquiring corporation is a domestic corporation, then the taxable year of the transferor corporation shall end with the close of the date of the transfer and the taxable year of the acquiring corporation shall end with the close of the date on which the transferor's taxable year would have ended but for the occurrence of the transfer. If a foreign corporation, with effectively connected earnings and profits or non-previously taxed accumulated effectively connected earnings and profits (as defined in the regulations under section 884), is the transferor corporation in a reorganization described in section 368(a)(1)(F) in a taxable year beginning after February 15, 1990 (or in a taxable year beginning after December 31, 1986, and on or before February 15, 1990 to which the transferor corporation chooses to apply this rule), in which the acquiring corporation is a foreign corporation, then the taxable year of the transferor corporation shall end with the close of the date of the transfer and the taxable year of the acquiring corporation shall end with the close of the date on which the transferor's taxable year would have ended but for the occurrence of the transfer. With regard to the consequences of the closing of the taxable year, see section 381 and the regulations thereunder.

(f) *Exchanges under sections 354(a) and 361(a) in certain section 368(a)(1)(F) reorganizations.* In every reorganization under section 368(a)(1)(F), where the transferor corporation is a foreign corporation, there is considered to exist—

(1) A transfer of assets by the transferor corporation to the acquiring corporation under section 361(a) in exchange for stock of the acquiring corporation and the assumption by the acquiring corporation of the transferor corporation's liabilities;

(2) A distribution of the stock (or stock and securities) of the acquiring corporation by the transferor corporation to the shareholders (or shareholders and security holders) of the transferor corporation; and

(3) An exchange by the transferor corporation's shareholders (or shareholders and security holders) of the stock (or stock and securities) of the transferor corporation for stock (or stock and securities) of the acquiring corporation under section 354(a).

For this purpose, it shall be immaterial that the applicable foreign or domestic law treats the acquiring corporation as a

continuance of the transferor corporation.

OMB Control Numbers Under the Paperwork Reduction Act

PART 602—[AMENDED]

Par. 7. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 8. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 1.367(e)–1T * * * 1545–1124 "§ 1.367(e)–2T * * * 1545–1124.

Dated: December 4, 1989.

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

Approved:

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 90–482 Filed 1–12–90; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has (1) determined that USS RICHMOND K. TURNER (CG–20) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval cruiser; and (2) directed that certain naval ships and classes of ships be deleted from the tables in the existing part 706. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: December 21, 1989.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (202) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS RICHMOND K. TURNER (CG–20) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the location of the forward masthead light in the foward quarter of the ship, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a naval ship. The Judge Advocate General of the Navy has also certified that the above mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided that the Judge Advocate General of the Navy has determined that certain naval ships and classes of ships listed in the existing tables of 32 CFR part 706 may be deleted from those tables because those ships and classes of ships have been stricken from the Naval Vessel Register.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on USS RICHMOND K. TURNER (CG–20) in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table One of § 706.2 is amended by removing the following ships:

USS BONEFISH (SS–582)
USS SARGO (SSN–583)
USS SCAMP (SSN–588)
USS TULLIBEE (SSN–597)
USS POLLACK (SSN–603)
USS DACE (SSN–607)
USS JOHN ADAMS (SSBN–620)
USS NATHANIEL GREENE (SSBN–636)

3. Table Three of § 706.2 is amended by removing the following ships:

USS BONEFISH (SS–582)
USS SARGO (SSN–583)
USS SCAMP (SSN–588)
USS TULLIBEE (SSN–597)
USS POLLACK (SSN–603)
USS DACE (SSN–607)
USS JOHN ADAMS (SSBN–620)
USS NATHANIEL GREENE (SSBN–636)

4. Table Four of § 706.2 is amended by removing from the existing paragraph 13 the following ship:
USS RICHMOND K. TURNER (CG–20)

5. Table Five of § 706.2 is amended by removing the following ship:
USS NORTON SOUND (AVM–1)

6. Table Five of § 706.2 is amended by revising the existing entry for "USS RICHMOND K. TURNER (CG–20)" to read as follows:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
*	*	*	*	*	*	*	*	*	
USS RICHMOND K. TURNER	CG–20					X	X		27
*	*	*	*	*	*	*	*	*	

§ 706.3 [Amended]

7. Table One of § 706.3 is amended by removing the following ships and classes of ships:
USNS BOWDITCH (T–AGS–21)
USNS UTE (T–ATF–76)
USNS LIPAN (T–ATF–85)
USNS AEOLUS (T–ARC–3)
USS TULLIBEE (SSN–597)
DD–825 Class

Dated: January 10, 1990.
Dated: December 21, 1989.
Approved:

E.D. Stumbaugh,

Rear Admiral, JAGC, U.S. Navy, Judge Advocate General.

[FR Doc. 90–929 Filed 1–12–90; 8:45 am]
BILLING CODE 3810–AE–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3704–4; NC–040]

Approval and Promulgation of Implementation Plans; North Carolina: Revisions to the SIP Including PM_{10}

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On May 2, 1988, the State of North Carolina submitted to EPA several revisions to the State Implementation Plan. The revisions were the result of three separate hearings held on February 15, 1988. The first hearing dealt with the adoption of New Source Performance Standards; a notice of the resulting delegation was published on June 22, 1988 (53 FR 23390). The third hearing dealt with revisions to the 111(d) plans along with other minor bookkeeping revisions; approval of these revisions was published on December 12, 1988 (53 FR 49881). The second hearing dealt with several miscellaneous revisions, including provisions for PM_{10}. EPA proposed approval of those revisions on April 20, 1989 (54 FR 15957) and no comments were received.

DATE: This rule will become effective on February 15, 1990.

ADDRESSES: The State's submittals are available for public inspection during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.
EPA Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.
Air Quality Section, Division of Environmental Management, North Carolina Department of Natural Resources and Community Development, 512 North Salisbury Street, Raleigh, North Carolina 27611.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalyn D. Hughes, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347–2864 or FTS–257–2864.

SUPPLEMENTARY INFORMATION: On May 2, 1988, the State of North Carolina submitted to EPA several revisions to the State Implementation Plan (SIP). The revisions were the result of three separate public hearings on February 15, 1988. The first hearing dealt with the adoption of New Source Performance Standards. EPA delegated to the State authority for the affected source category on June 1, 1988, and the public was notified on June 22, 1988 (53 FR 23390). The third hearing dealt with revisions to the 111(d) plan along with other minor bookkeeping revisions. EPA approved those revisions on December 12, 1988 (53 FR 49881).

The second hearing dealt with several revisions, including the State's PM_{10} provisions. The hearing affected the following regulations, which will be addressed in this notice: 15 NCAC 2D.0101, Definitions; 15 NCAC 2D.0104, Adoption by Reference Updates; 15 NCAC 2D.0302, Episode Criteria; 15 NCAC 2D.0403, Suspended Particulate; 15 NCAC 2D.0409, Particulate Matter; 15 NCAC 2D.0501, Compliance with Emission Control Standards; 15 NCAC 2D.0530, Prevention of Significant Deterioration; 15 NCAC 2D.0531, Sources in Non-Attainment Areas; 15 NCAC 2D.0532, Sources Contributing to an Ambient Violation; 15 NCAC 2D.0913, Determination of Volatile Content of Surface Coatings; 15 NCAC 2D.0916, Determination of VOC Emissions from Bulk Gasoline Terminals; 15 NCAC 2D.0939, Determination of Volatile Organic Compound Emissions; 15 NCAC 2D.0940, Determination of Leak Tightness and Vapor Leaks; 15 NCAC 2H.0601, Purpose and Scope; and 15 NCAC 2H.0603, Applicability. EPA proposed approval of these revisions on April 20, 1989 (54 FR 15957) and no comments were received.

SIP Amendments

The definitions which are being added to meet the federal PM_{10} requirements are for "PM_{10}", "particulate emissions," and "PM_{10} emissions." "total suspended particulate." At the request of EPA, the term "air pollutant" is being defined. Also, in order to facilitate the permitting process the terms "construction," "facility," "owner or operator," "permitted," and "source" are being defined. All of these definitions are acceptable to EPA.

North Carolina adopted a new regulation in response to a legislative amendment which allows amendments to referenced federal regulations to be adopted without going through the normal rulemaking process. Regulation, 2D.0104 affects eight other regulations by automatically incorporating by reference amendments to the Code of Federal Regulations (CFR). The eight regulations affected (2D.0501, 2D.0530, 2D.0531, 2D.0532, 2D.0913, 2D.0916, 2D.0939, and 2D.0940) are amended by deleting from them the mention of a specific version of the CFR. This change is approvable for 2D.0501, 2D.0913, 2D.0916, 2D.0939, and 2D.0940 because it allows future amendments to EPA test methods and sampling procedures in the CFR to be incorporated in the North Carolina regulations without having to go through the normal rulemaking process. A problem, however, does exist with automatically updating Regulations 2D.0530, 2D.0531 and 2D.0532.

These two regulations deal with prevention of significant deterioration and new source review. The automatic incorporation of CFR amendments in these regulations does not mean that the federally enforceable SIP is automatically revised. To revise the federally approved SIP, North Carolina must submit the revision to EPA after the revision has gone through the procedural requirements of 40 CFR 51.102, and EPA will approve it as part of the SIP. In response to this problem, North Carolina committed to restore to 2D.0530, 2D.0531 and 2D.0532 the reference to a specific revision of the CFR and to the removal of the 2D.0530, 2D.0531 and 2D.0532 references in 2D.0104. Based on this committal, EPA proposed to approve 2D.0104. On July 14, 1989, North Carolina submitted a revised 2D.0104, 2D.0530, 2D.0531 and 2D.0532 as requested and EPA is proceeding with the approval.

Regulation 2D.0409, Particulate Matter, is being added to incorporate the two new PM_{10} ambient air quality standards. It also includes methods used to determine attainment of the PM_{10} standards which are the same as the standards and methods in the July 1, 1987, **Federal Register** notice (52 FR 24 634).

Regulations 2D.0530 and 2D.0531 and 2D.0532 are being amended to specify the transitional provisions to be used in changing from the total suspended particulate standard to the PM_{10} standard and to add the PM_{10}

significance levels. These regulations are also affected by 2D.0104. North Carolina committed to removing the automatic updating clause from 2D.0530, and 2D.0531 and 2D.0532 at the next public hearing and EPA proposed approval of the two revised regulations. North Carolina removed the clause from 2D.0530, 2D.0531 and 2D.0532 and submitted the revisions as SIP revisions on July 14, 1989.

Regulation 2H.0601, Purpose and Scope, is being amended to delete a paragraph that paraphrases North Carolina General Statute 143-215-108(a), as recommended by the State's Office of Legal Affairs. Also on the advice of the Office of Legal Affairs, the permit requirements for complex sources have been clarified. The final amendment to 2H.0601 requires the owner or operator seeking an exemption from permitting requirements to demonstrate that both the emission standards and air quality standards will not be contravened.

Regulation 2H.0603, Applicability, is being amended to require incinerators constructed before July 1, 1987 to use an allowable particulate emission rate of 0.08 grains per dry standard cubic foot (0.08 grf/dscf) instead of the applicable pounds per hour rate in order to have their permits adopted as part of the SIP. Region IV has been working with North Carolina on this revision for several years and concurs on this version.

Final Action

EPA has revised the submitted materials and found it to meet the requirements of 40 CFR part 51. Therefore, EPA is approving the North Carolina revisions.

For further information on EPA's analysis, the reader may consult a Technical Support Document which contains a detailed review of the materials submitted. This is available at the EPA address given above.

Under section 307(b)(1) of the Act, petition for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 19, 1990. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

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

Nothing in this section should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

List of Subjects in 40 CFR Part 52

Air Pollution control, Hydrocarbons, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: November 29, 1989.

Lee A. DeHihns, III,

Acting Regional Administrator.

40 CFR part 52, subpart II, is amended as follows:

PART 52—[AMENDED]

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

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

2. Section 52.1770 is amended by adding paragraph (c)(61) to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(61) Revisions to the SIP including PM_{10} revisions submitted on May 2, 1988, and July 14, 1989 by the North Carolina Department of National Resources and Community Development.

(i) *Incorporation by reference.* (A) July 1, 1988 revisions to North Carolina Administration Code Regulation No.:

2D.0101—Definitions, (18) and (25)-(33)
2D.0302—Episode criteria, (2)(g), (3)(g), (4) (f) and (g)
2D.0403—Total suspended particulates
2D.0409—Particulate matter
2D.0501—Compliance with emission control standards, (c)(16)
2D.0913—Determination of volatile content of surface coatings
2D.0916—Determination of VOC emissions from bulk gasoline terminals
2D.0939—Determination of volatile organic compound emissions
2D.0940—Determination of leak tightness and vapor leaks
2D.0601—Purpose and scope
2D.0603—Applications, (f) (5) and (6)

(B) October 1, 1989 State-effective revisions to North Carolina Administration Code No.:

2D.0104—Adoption by Reference Updates
2D.0530—Prevention of Significant Deterioration, (h)
2D.0531—Sources in Non-Attainment Areas, (d)
2D.0532—Sources Contributing to an Ambient Violation, (d)

(ii) Additional material. (A) May 2, 1988 letter from North Carolina Department of Natural Resources and Community Development.

(B) July 14, 1989 letter from North Carolina Department of Natural Resources and Community Development

[FR Doc. 90-839 Filed 1-12-90; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Parts 52 and 81

[FRL-3704-3]

Approval and Promulgation of Implementation Plans; and Designation of Areas for Air Quality Planning Purposes; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's rulemaking takes final action to approve the Kansas particulate matter PM_{10} State Implementation Plan (SIP) revision. This action is in response to a request submitted by Kansas on October 5, 1989. The PM_{10} SIP submittal requested that EPA redesignate the Kansas group II area as unclassifiable with respect to the total suspended particulates (TSP). As a result of this action, all areas of the state of Kansas will be unclassifiable or attainment with respect to TSP.

EFFECTIVE DATE: This rulemaking will become effective on February 15, 1990.

ADDRESSES: Documents relevant to this action are available for public inspection at the Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, during normal business hours. Copies are also available during normal business hours at the Kansas Department of Health and Environment, Division of Air Quality and Radiation Control, Forbes Field, Topeka, Kansas 66620, and the Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Wayne A. Kaiser at (913) 236-2893; (FTS 757-2893).

SUPPLEMENTARY INFORMATION:

Background

On July 1, 1987, EPA promulgated a new national ambient air quality standard (NAAQS) for particulate matter. The new standard applies only to particles with a nominal aerodynamic diameter of 10 micrometers or less (PM_{10}). The new standard replaces TSP as an ambient air quality standard.

In order for states to regulate PM_{10}, they must make certain changes in their rules and regulations and in the SIPs. The changes to the rules and the SIP must ensure that the PM_{10} NAAQS are attained and maintained; that new and modified sources which emit PM_{10} are reviewed; that PM_{10} is one of the pollutants to trigger alert, warning, and emergency actions; and that the states' monitoring networks be designed to include PM_{10} monitors. These changes must be made regardless of the existing levels of PM_{10} in any area of the state.

Where preliminary monitoring data indicate that it is likely PM_{10} standards are being exceeded in an area, a control strategy is required to show how PM_{10} emissions will be reduced to provide for attainment and maintenance of the PM_{10} NAAQS. This is called a group I area.

If data show that the PM_{10} standards could possibly be met in an area but there is some uncertainty, the states are required to commit to perform additional PM_{10} monitoring in such an area and to prepare a control strategy if the data show with certainty that the standards are being exceeded. This is called a group II area. The commitments must be submitted in the form of a SIP revision and are termed a "committal" SIP.

Where available particulate matter data indicate the PM_{10} air quality is better than the standards, EPA presumes that the existing SIP is adequate to demonstrate attainment and maintenance of the PM_{10} standards. This is called a group III area. Preconstruction review and emergency episode provisions are the only PM_{10} rule revisions required for group III areas. The regulations require PM_{10} SIPs to be submitted nine months after the federal PM_{10} regulations became effective on July 31, 1987. However, because of the burdensome administrative requirements for adoption of rules in some states, they were given some flexibility in the scheduling of their PM_{10} SIP submissions.

PM_{10} Attainment Status in Kansas

Based upon existing TSP and PM_{10} air quality data, there are no areas in Kansas where the standards are likely to be exceeded (group I) and one area where the attainment status is uncertain (group II). This group II area is the eastern portion of Kansas City, Kansas, in Wyandotte County. The remainder of the state is group III.

Based upon available PM_{10} data and in accordance with section 110 of the Clean Air Act (CAA) and EPA regulations at 52 FR 24672, Kansas must meet the following requirements for EPA to approve its SIP for PM_{10}: (1) Adopt acceptable revisions to its preconstruction review rules, (2) submit a committal SIP for Kansas City, Kansas, (3) revise the emergency episode plans to incorporate PM_{10}, and (4) revise the air monitoring plan, if necessary, to meet the requirements of 40 CFR part 58, and update the monitoring network to add PM_{10}.

The Kansas submittal consists of: (1) Revisions to the Kansas new source review rules, (2) a committal SIP for Kansas City, Kansas, (3) revised emergency episode rules which include PM_{10}, and (4) a revised Air Quality Surveillance Plan with updated network description for the National Air Monitoring Systems and the State and Local Air Monitoring System.

The Kansas submittal has been reviewed to determine if it meets the requirements of the CAA, EPA regulations, and applicable policies. EPA has determined that the submittal substantially meets all the requirements. The only exception concerns reporting of PM_{10} data which exceed the standard within 45 days of the exceedance, which is required by EPA policy. The state of Kansas will commit to report such data within 60 days rather than 45 days. The state contends that the extra time is required for filter collection and transport by the local agency in the group II area, weighing of the filter by the state, and quality assurance and reporting of the data. EPA believes this is not a significant deviation from the requirements and finds the state has good cause for the extra reporting time. The technical support document contains a discussion of the other requirements of the submittal.

The draft PM_{10} SIP was submitted by KDHE on December 14, 1988. This submittal was processed using parallel processing procedures. The proposed SIP was noticed for public comment in 54 FR 11413 on March 20, 1989. No comments were received during the public comment period. The state held a public hearing on the proposed SIP revisions on July 17, 1989, and formally adopted the proposed revisions. No substantive changes were made from the proposal. The state submitted its final SIP revision and committal SIP to EPA on October 5, 1989. The state provided evidence of a public hearing and notification that satisfies the requirements of 40 CFR 51.102.

Review of PM_{10} Regulatory Revisions

The state made the following changes in its rules. A more detailed discussion is contained in the proposed rulemaking (54 FR 11413) and in the technical support document.

Rule definitions are contained in Rule 28–19–7. Rule 28–19–7(p) pertaining to particulate was revised to define particulate matter as any airborne finely divided solid or liquid material, except uncombined water. The state definition differs from that at 40 CFR 51.100(oo) in that it does not limit the upper size of particles to less than 100 micrometers, and excludes uncombined water. These two differences are acceptable. State rule 28–19–7(q) establishes a definition of PM_{10} which is consistent with 40 CFR 51.100(pp), and 28–19–7(x) establishes a definition of TSP which is consistent with 40 CFR 51.100(ss). Rules 28–19–8, 28–19–14, 28–19–16a, 28–19–20, and 28–19–21 are amended to: (1) Change the effective date of the Federal regulations, which are adopted by reference; (2) include significant emission rate for PM_{10}; (3) change terminology to provide consistency with the definition in regulation 28–19–7, and (4) delete the definition of "Significantly contribute," since this requirement has been adopted by reference in the Prevention of Significant Deterioration (PSD) rule (K.A.R. 28–19–17).

Rule 28–19–17 pertains to new source permit requirements for designated attainment or unclassified areas. Rule 28–19–17a, Definitions, adopts all the pertinent definitions contained in 40 CFR 52.21(b) by reference; therefore, both PM_{10} and TSP are addressed in the Kansas definitions of major stationary source, emission unit, best available control technology (BACT), and significant. Rule 28–19–17a(c) contains a definition of "applicable maximum allowable increase" which refers to the Prevention of Significant Deterioration (PSD) increments in section 163 of the CAA. The rule indicates that particulate matter in this case means TSP, which is defined at 28–19–7q. Rule 28–19–17b(h), which establishes the significance levels for determining whether a source shall be considered to cause or contribute to a violation of an NAAQS, was revised to include PM_{10} levels and to satisfy the requirements of 40 CFR 51.165(b). Rules 28–19–17c, 28–19–17g, and 28–19–17i are amended to include the effective date of Federal regulations, which are adopted by reference. Rule 28–19–56, pertaining to alert, warning, and emergency levels contained in emergency episode plans, has been revised to be consistent with 40 CFR Appendix L. The state made a number of other technical corrections and minor wording changes in its regulations which are unrelated to PM_{10}. EPA concurs with these changes.

EPA Action: EPA approves the revised Kansas PM_{10} SIP regulations and committal SIP submitted by Kansas on

October 5, 1989. These revisions are: Rule 28–19–7, Definitions: 28–19–7(p), 28–19–7(q), 28–19–7(x); Rule 28–19–8, New source reporting requirements 28–19–8b(1) and 28–19–8b(2); Rule 28–19–14, Permits required; Rule 28–19–16a, Definitions; Rule 28–19–17a, Definitions; Rule 28–19–17b, Permit required; Rule 28–19–17c, Exemptions; Rule 28–19–17g, Air quality analysis; Rule 28–19–17i, Sources affecting federal Class I areas; Rule 28–19–20, Particulate matter emission restrictions; Rule 28–19–21, Additional emission restrictions; and Rule 28–19–56, Episode criteria.

Area Redesignation

The final rulemaking promulgating EPA's PM_{10} SIP requirements published on July 1, 1987 (52 FR 24682) discussed an Area Designation Policy with respect to TSP. The EPA encouraged states to submit requests to redesignate TSP nonattainment areas to unclassifiable for TSP at the time the PM_{10} control strategy for the area is submitted. The rulemaking stated that when EPA approves the control strategy as sufficient to attain and maintain the PM_{10} NAAQS, it will also approve the redesignation request. An area designation for TSP must be retained until EPA promulgates PM_{10} increments, because the section 163 PSD increments depend upon the existence of section 107 designations. Section 107 does not provide for PM_{10} area designations; thus, TSP area designations are retained until such time as there is a provision for PM_{10} designations.

The State of Kansas requested TSP redesignation to unclassifiable for Kansas City, Kansas, in its committal SIP. EPA agrees with the Kansas redesignation request.

The State of Kansas revised its Air Quality Surveillance Plan which constitutes its monitoring SIP. The monitoring SIP was originally approved by EPA in 1982. The plan contained references to TSP monitoring which were removed. The plan meets all the requirements of 40 CFR part 58. SLAMS and NAMS network descriptions were submitted, but these are not being approved as part of the SIP.

EPA Action: EPA approves Kansas' request to redesignate Kansas City, Kansas, In Wyandotte County from secondary nonattainment with respect to TSP to unclassifiable for TSP. The revised Air Quality Surveillance Plan which contains the PM_{10} monitoring SIP is also approved.

Nothing in this action should be construed as permitting or 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 section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the U.S. Court of Appeals for the appropriate circuit by March 19, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Air pollution control, National parks, Wilderness areas.

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

Dated: December 14, 1989.

Morris Kay,

Regional Administrator.

40 CFR part 52, subpart R, is amended as follows:

PART 52—[AMENDED]

Subpart R—Kansas

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.870 is amended by adding paragraph (c)(25) to read as follows:

§ 52.870 Identification of plan.

* * * * *

(c) * * *

(25) Revised Kansas Administrative Regulations (K.A.R.) pertaining to PM_{10} regulations and the PM_{10} committal SIP were submitted by Kansas on October 5, 1989.

(i) *Incorporation by reference.* (A) Revised regulations Article 19—Ambient Air Quality Standards and Air Pollution Control, K.A.R. 28–19–7, 28–19–8, 28–19–14, 28–19–16a, 28–19–17a, 28–19–17b, 28–19–17c, 28–19–17g, 28–19–17i, 28–19–20, 28–19–21, and 28–19–56, published August 31, 1989, effective October 16, 1989.

(ii) *Additional material.* (A) Letter of October 5, 1989, from the Secretary of the Kansas Department of Health and Environment (KDHE).

(B) Memorandum of October 16, 1989, from the Secretary of State (Kansas) to Stanley Grant (KDHE).

(C) Revised Air Quality Surveillance Monitoring Plan—Section E.

3. The table in § 52.879 is revised to read as follows:

§ 52.879 Attainment dates for national standards.

* * * * *

Air quality control region	Pollutant								
	Particulate matter		Sulfur oxides		Nitrogen dioxide	Carbon monoxide	Photochemical oxidants (hydrocarbons)	Lead	PM_{10}
	Primary	Secondary	Primary	Secondary					
Metropolitan Kansas City Interstate	d	a	c	c	c	5/31/77	d	c	b
South Central Kansas Interstate	a	a	c	c	c	d	a	c	c
Northeast Kansas Intrastate	a	a	c	c	c	c	d	c	c
Southeast Kansas Intrastate	c	c	c	c	c	c	c	c	c
North Central Kansas Intrastate	a	a	c	c	c	c	c	c	c
Northwest Kansas Intrastate	a	a	c	c	c	c	c	c	c
Southwest Kansas Intrastate	a	a	c	c	c	c	c	c	c

Note: Sources subject to plan requirements and attainment dates established under section 110(a)(2)(A) prior to the 1977 Clean Air Act Amendments remain obligated to comply with those requirements by the earlier deadlines. The earlier attainment dates are set out at 40 CFR part 52 (1980), § 52.879.

a. July 1975.
b. January 19, 1993.
c. Air quality levels presently below secondary standards.
d. December 31, 1982.

4. A new § 52.881 is added to read as follows:

§ 52.881 PM_{10} State implementation plan development in group II areas.

The state has submitted a committal SIP for Kansas City, Kansas. The committal SIP contains all the requirements identified in the July 1, 1987, promulgation of the SIP requirements for PM_{10} at 52 FR 24681, except the state will report the PM_{10} data which exceed the standard within 60 days of the exceedance, rather than 45 days.

40 CFR part 81, subpart C, is amended as follows:

PART 81—[AMENDED]

Subpart C—Kansas

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 81.317 is amended by revising A. on the last entry in the attainment status designation table for TSP to read as follows:

§ 81.317 Kansas TSP.

KANSAS—TSP

Designated area (county)	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * * * * * *				
Wyandotte County				
A. Most of the area between I–635 and the Missouri state line			x	
* * * * * * *				

[FR Doc. 90–838 Filed 1–12–90; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 186

Updating of Pesticide Names

CFR Correction

In title 40 (Parts 150 to 189) of the Code of Federal Regulations, revised July 1, 1989, make the following corrections:

1. On page 448, remove § 186.2775.

2. Move § 186.2775 from page 447, and place it on page 448, after § 186.2750.

3. On page 447, insert § 186.2275, to read as follows:

§ 186.2275 N,N-Dimethylpiperidinium chloride.

(a) A tolerance is established for residues the plant growth regulator *N,N*-dimethylpiperidinium chloride in the following processed feed when present therein as a result of application of this plant growth regulator to growing cotton:

Feed	Parts per million
Cottonseed meal	3

[45 FR 27926, Apr. 25, 1980. Redesignated at 53 FR 24668, June 29, 1988]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 433 and 447

[BQC–064–F]

RIN 0938–AC64

Medicaid Program; State Plan Requirements and Other Provisions Relating to State Third Party Liability Programs

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

ACTION: Final rule.

SUMMARY: This final rule implements certain Medicaid State plan requirements and other provisions relating to State third party liability (TPL) programs. Its provisions deal with: (1) The integration of a State's pursuit of third party claims with its Mechanized Claims Processing and Information Retrieval System; (2) exceptions to the cost avoidance method of claims payment in TPL situations; and (3) provider restrictions and penalties related to attempts at collection of cost sharing or portions of those amounts from Medicaid recipients when TPL has been established.

These regulations implement portions of section 9503 of the Consolidated Omnibus Budget Reconciliation Act of 1985.

DATE: These regulations are effective on February 15, 1990. For §§ 433.139(3) (i) and (ii), a State agency has until 90 days after receipt of a revised State plan preprint from HCFA central office to submit its plan amendments and required attachments to its HCFA regional office. For § 433.138(k), a State agency has until 120 days after receipt of revised State Medicaid Manual instructions from HCFA central office to submit its action plans to its HCFA regional office. We will not hold States out of compliance with the requirements of these final regulations if the States submit the necessary preprinted plan amendments and action plans by the appropriate dates.

FOR FURTHER INFORMATION CONTACT:

Rick Friedman, (301) 966–3292—System Requirements and Performance Standards, and State Action Plans; Exceptions to Cost Avoidance

Marty Svolos, (301) 966–4452—Provider Restrictions

SUPPLEMENTARY INFORMATION:

I. Background

The Medicaid program established by title XIX of the Social Security Act (the Act), provides medical assistance to certain low-income individuals and is administered by the States in accordance with Federal requirements. The program by law is intended to be the payor of last resort; that is, other available third party resources must be used before the Medicaid program pays

for the care of an individual eligible for Medicaid.

A third party is any individual, entity or program that is or may be liable to pay all or part of the expenditures for medical assistance furnished under a State plan. Examples of liable third parties include commercial insurance companies, either through employment-related or privately-purchased health insurance, or through casualty-related coverage available as a result of an accidental injury; payments received directly from an individual who either has accepted voluntarily or been assigned legal responsibility for the health care of one or more Medicaid recipients; fraternal groups; unions; or State workers' compensation commissions. Other examples of a third party resource would include medical support provided through an absent parent and entities providing medical services.

The overall purpose of State Medicaid third party liability (TPL) programs is to ensure that Federal and State funds are not misspent for covered services to eligible Medicaid recipients when third parties exist that are legally liable to pay for those services.

Section 1903(o) of the Act prohibits Federal matching of State Medicaid payments if a private insurer would have been liable to pay for the medical care under its policy, if the policy did not include an exclusionary clause which limits or excludes liability when the individual is eligible for Medicaid. Section 1903(d)(2) of the Act provides for consideration of the Federal share of any amounts already recovered by a State from a third party for medical assistance as an overpayment to the State, and for appropriate adjustment of the quarterly Medicaid payments made by the Federal government to the State.

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Pub.L. 99-272, was enacted on April 7, 1986. Section 9503 of COBRA amended section 1902(a)(25) and other sections of the Act to set forth certain new State plan requirements and other provisions relating to TPL.

Before enactment of COBRA, section 1902(a)(25) of the Act required only that State or local Medicaid agencies take all reasonable measures to ascertain the legal liability of third parties to pay for care and services furnished to Medicaid recipients.

The provisions of section 9503 of COBRA deal with: (1) Submission of an action plan to the Secretary for pursuing claims against third parties; (2) integration of the plan with the State's mechanized claims processing and information retrieval system (hereafter referred to as the Medicaid Management Information System (MMIS)); (3) the Secretary's responsibility to develop performance standards to assess TPL collection efforts with respect to this integration; (4) certain exceptions to the cost avoidance method of claims payment in TPL situations; and (5) provider restrictions and provider penalties related to the collection of cost sharing or portions of those amounts from Medicaid recipients when TPL has been established.

In accordance with the specific provisions of section 9503 of COBRA, we published a proposed rule on March 3, 1987 (52 FR 6350). Sections II, III and IV of the preamble to the proposed rule provide the background and a detailed explanation of each of the proposed provisions.

II. Provisions of the Proposed Regulations

In order to implement specific portions of section 9503 of COBRA, we proposed to amend the Medicaid regulations in 42 CFR parts 433 and 447. A summary of the proposed changes is provided below.

A. State Action Plan for Pursuit of Claims Utilizing the MMIS (§ 433.138)

- We proposed a new paragraph (k) that would require a State having an MMIS approved by HCFA to provide to the HCFA Regional Office, within 90 days (that is, 90 days from the publication of the final rule,) an "action plan" for pursuing claims against third parties.
- We proposed that the action plan for pursuing TPL claims must be integrated with the operation of the State's mechanized claims processing and information retrieval system. We also proposed that the plan must describe the actions and methodologies the State would follow in: (1) Identifying third parties; (2) determining the liability of third parties; (3) avoiding payment of third party claims as prescribed in regulations at § 433.139(b)(1); (4) recovering reimbursement from third parties after Medicaid payment as prescribed in regulations at § 433.139(b)(2); and (5) recording and tracking this information and actions.
- We proposed that the action plan would be subject to regional office approval and would be consistent with the conditions for reapproval set forth in § 433.119 of the MMIS regulations.
- We proposed that the implementation of the action plan would be monitored as part of HCFA's review of the MMIS and would be subject to FFP reduction in accordance with MMIS regulations (§ 433.138(k)).

B. Performance Standards (§ 433.123)

We also set forth in the preamble of the proposed rule a new Performance Standard 8 to be used to monitor the performance of a State's TPL system (52 FR 6353). We stated in the preamble that the proposed standards would become effective October 1, 1987.

This proposal was issued in accordance with § 433.123 that sets forth requirements that HCFA publish a notice for public comment in the **Federal Register** of any proposed changes in conditions of approval or reapproval. Changes would include requiring State agencies to revise an existing subsystem to meet additional or revised performance standards or elements. Under § 433.123, we must publish our response to the comments received on any proposed changes as well as the final decision regarding those changes in the **Federal Register.** In addition, we must publish the final requirements in the State Medicaid Manual and allow an appropriate time period for the State agencies to comply with the new requirements.

C. Systems Requirements

We also restated in the preamble of the proposed rule (52 FR 6353), the current systems requirements relating to State TPL efforts. Current systems requirements for approved systems contained in part 11, chapter 3 of the State Medicaid Manual (HCFA Pub. 45-11) are sufficient to meet the statutory requirements contained in section 9503 of COBRA. However, these requirements are stated in the manual in general terms. Since these requirements are so integrally related to the action plans required under section 1902(a)(25)(A)(ii) of the Act, and to assist States in developing their action plans, we restated the requirements found in the State Medicaid Manual, part 3, chapter 10, section 3900 (HCFA Pub. 45-3). If systems modifications are required in some States to meet the requirements of section 9503 of COBRA, we will continue to make enhanced Federal funding available for modification to those TPL systems which are part of the required core system.

Performance of the system in meeting these requirements will continue to be monitored by the system reapproval review required by section 1903(r)(4) of the Act. The TPL action plan will be monitored as part of this reapproval review against specific performance standards.

The system requirements, as restated in the preamble to the proposed rule follow:

System Requirement 1

The system must have the capability to receive and maintain identification of third party resources from all sources.

System Requirement 2

The system must have the capability to identify, control and accurately account for the number of claims that must be cost avoided and to maintain identification of dollar amounts that are cost avoided and remaining dollar amounts that are paid by the Medicaid agency for such claims. The system must identify and control claims that are resubmitted for payment by the agency.

System Requirement 3

The system must have the capability to identify and control and accurately account for the number of claims for which the agency must seek recovery of reimbursement and must have the capability to maintain identification of associated dollar amounts representing the agency's estimate of potentially recoverable amounts and also actual recovered amounts.

D. Cost Avoidance Method of Claims Payment (§ 433.139)

- We proposed to add a new paragraph (b)(3) to reflect the COBRA exceptions to the cost avoidance method when the claim is for covered services for prenatal care for pregnant women, preventive pediatric services, or covered services furnished to an individual on whose behalf child support enforcement is being carried out by the State title IV–D agency. (The term "cost avoidance" is used when the agency pays claims involving third party liability only to the extent the agency's payment schedule amount exceeds the amount paid by the third party.)
- We proposed additional requirements that providers must follow when submitting claims under the exceptions regarding child support enforcement. These requirements were: (1) The provider furnishing the service must identify the third party and certify that the third party has been billed for reimbursement; (2) the provider furnishing the service must certify that 30 days have elapsed since the date of furnishing the service and that payment has not been received from the third party; and (3) the provider must acknowledge the Medicaid payment as payment in full.

E. Third Party Liability and Certain Provider Restrictions (§§ 447.20 and 447.21)

We proposed to amend part 447, subpart A of the regulations by adding two new sections.

- A new § 447.20 proposed State plan requirements relating to the COBRA prohibitions on provider collections of certain payment amounts (§ 447.20(a)) and refusals to furnish covered services to Medicaid recipients (§ 447.20(b)).
- We proposed a new § 447.21 to reflect the COBRA reduction of payments to providers that seek to collect from a recipient amounts that exceed that permitted under the new § 447.20(a). We also proposed to set forth the amount of the payment reduction to the provider that the Medicaid agency may impose for a provider violation, and proposed to require that the State include, as part of its State plan, a description of its policy regarding the reduction in payment amounts that the agency may impose.

III. Analysis of and Responses to Public Comments

In developing this final regulation, we considered the 16 items of correspondence that were received within the prescribed comment period. These comments were from State Medicaid agencies and professional organizations. The comments and our responses to those comments are discussed below.

A. Cost Avoidance Method of Claims Payment (§ 433.139)

Comment: One commenter interpreted the proposal to mean that a Medicaid-enrolled child or pregnant woman would have to be participating in the title IV–D child support program before the State would "pay and chase". (The term "pay and chase" is used when the State pays the total amount allowed under the agency's payment schedule and then seeks reimbursement from the liable third party.)

Response: This is a misinterpretation of the proposed rule. We believe that the commenter was confused by the parenthetical phrase in proposed § 433.139(b)(3). The "pay and chase" provision applies to all Medicaid claims for prenatal care for pregnant women and for preventive pediatric services. The title IV–D provision is a separate "pay and chase" requirement that applies to services provided to an individual for whom child support enforcement services are being carried out under title IV–D.

Comment: Two commenters were concerned that the regulation may be interpreted to mean that the "pay and chase" method must be used in all cases involving a title IV–D affiliation.

Response: We refer the commenter to the proposed § 433.139(b)(3). The parenthetical phrase in this section clarifies that the TPL referred to in § 433.139(b)(3)(ii) must be derived from a parent whose obligation to pay support is being enforced by the title IV–D agency.

Comment: Several commenters claim that mandating "pay and chase" in certain situations conflicts with Federal emphasis on cost avoidance. Some commenters contend that substantial systems modification will be necessary and very costly.

Response: The exceptions to cost avoidance are not inconsistent with Federal emphasis.

In amending the existing TPL program, Congress explicitly included "pay and chase" in three distinct situations in which it is not in the best interest of the Medicaid program to cost avoid. Congress is particularly concerned that "the administrative burden associated with TPL efforts not discourage participation in the Medicaid program by physicians and other providers of preventive pediatric and prenatal care, since the beneficiaries in need of such services already have difficulty finding providers in many communities" (H.R. Rep. No. 453, 99th Cong., 1st Sess. 544 (1985)). Therefore, Congress mandated that in cases of prenatal and preventive pediatric care, States must us the "pay and chase" method. In addition, the Congress also mandated that States use the "pay and chase" method in the case of recipients on whose behalf child support enforcement is being carried out by a State agency under title IV–D. The intent of this requirement is "to protect the mother and her dependent children from having to pursue the absent spouse, and his employer or insurer, for third party liability." Although not specifically mentioned in the Committee report, we also believe it is equally important and Congress' intention to protect the custodial parent whenever that person is someone other than the natural mother (for example: grandparent, stepparent, foster parent, father, etc.).

In line with Congressional concerns, we are revising our current policy to provide for additional exceptions to cost avoidance whenever it is proven to be cost effective. We are amending § 433.139(e) to allow States to request waivers to the cost avoidance method. This change is being issued in final for the reasons explained in the Waiver of Proposed Rulemaking section of this

preamble. Since Congress believes that it is important for Medicaid to "pay and chase" in certain situations, we will continue to permit waivers on an ongoing basis if appropriate. States must continue to use the cost avoidance method for services not included under § 433.139(b)(3) unless they have an approved waiver. The criterion for HCFA approval of these waivers will be cost effectiveness.

Guidelines to be used by States in developing documentation for requesting cost avoidance waivers will be issued in the "State Medicaid Manual". We are also adding, at § 433.139(e)(3), the requirement that if a waiver is approved, States submit adequate documentation every three years to substantiate the continued need for the waiver (that is, that their method is still as cost effective as the cost avoidance method).

Comment: One commenter asked what providers or recipients should do if they receive payment on a title IV–D claim from a liable third party after Medicaid has been billed.

Response: The recipient must reimburse the Medicaid State agency for the amount that the Medicaid agency paid for medical expenses. This requirement should be explained by the Medicaid agency (or the agent acting on behalf of the Medicaid agency), when the applicant or recipient assigns his or her rights under § 433.145. The provider is also required to reimburse Medicaid in connection with Medicaid covered services that the provider has furnished. At State option, the provider may either return to the Medicaid agency the amount Medicaid paid or may contact the Medicaid agency, which will in turn offset the amount against future Medicaid payments to the provider.

Comment: Several commenters believe that the title IV–D requirement would be extremely difficult and costly to administer, would not be cost effective, and would place an additional burden on State Medicaid agencies and providers. Some contend that it would result in duplicate payments and discourage provider participation. One commenter was concerned that this provision would have a negative impact on electronic claims processing by encouraging hard-copy submission. The commenter recommended that States be given flexibility in determining the documentation and certifications to be required of providers.

Response: We are revising § 433.139(b)(ii) to give States more flexibility. We are giving States the option to choose whether or not providers would be required to bill a third party in title IV–D court-ordered medical support situations. However, States must ensure that when a provider bills Medicaid, the provider indicates whether a third party has been billed. The State plan must specify the method chosen.

States must also have a method in place to monitor providers' compliance with the requirement that providers wait 30 days from the date of furnishing a service to bill Medicaid if they have billed a third party. The State plan must specify the method chosen. States could choose to require hard copy documentation that identifies the third party, certifies that the third party has been billed and certifies that 30 days have elapsed since the date of service, and payment has not been received. If 30 days have not elapsed, States could either return the claim to the provider or wait until 30 days have elapsed to process the claim for payment in accordance with their normal payment system.

In some cases, such as when electronic billing is used, it may not be cost effective to require hard copy certification. In these cases, the State would pay a claim in accordance with its normal payment methodology and follow up after the claim is paid to assure that providers have complied with billing requirements. At the time that a State contacts a third party to seek recovery, it can verify that the provider did not receive payment from the third party. We are also removing the requirement that States assure that the provider acknowledges the Medicaid payment as payment in full.

Comment: Some commenters pointed out that an insurance carrier rarely pays claims within 30 days from the date a service is furnished. They recommended that we change the timeframe from 30 to 60 days.

Response: The statute does not allow HCFA the flexibility to extend the 30-day provision to 60 days. We believe that in situations in which problems with billing a third party are known to exist, the provider will bill Medicaid. In most of the cases in which the provider bills the third party, the provider will wait a reasonable amount of time before billing Medicaid. States will pay and chase claims in accordance with their normal payment methodology in cases in which a third party has not been billed.

Comment: One commenter asked whether the title IV–D provision includes all services for an individual for whom child support enforcement services are being carried out under title IV–D, or it it applies only to those services that are a part of the child support enforcement order.

Response: The rule applies to all covered services furnished to an individual for whom child support enforcement services are being carried out under title IV–D.

Comment: One commenter contends that it will be difficult to differentiate between insurance carried by absent parents whose obligation to pay child support is enforced by title IV–D and those whose obligation is not. The commenter asked if States would be penalized for errors under the Systems Performance Review (SPR).

Response: Current Office of Child Support Enforcement (OCSE) regulations found at 45 CFR 306.50 and 306.51 require a title IV–D agency to notify Medicaid if there is a court order requiring an absent parent to obtain health insurance for a Medicaid applicant or recipient. This requirement should enable the State to readily identify this segment of the title IV–D population. OCSE also has implemented audit criteria that State title IV–D agencies must meet in order to be in compliance with the State plan requirement for medical support enforcement.

The Medicaid agency will only indirectly be subject to SPR penalties for errors in identifying title IV–D court ordered medical support cases. It is necessary for a Medicaid agency to have an edit in its system to detect title IV–D court ordered medical support cases in order to use the "pay and chase" method for these cases. Because the adequacy of the States' systems will be reviewed through the SPR, if the systems produce a significant number of errors, they will presumably be found inadequate and the errors will thus indirectly be penalized.

Comment: One commenter pointed out that States have no legal authority over persons who are not receiving assistance. Additional staff time and costs would be expended in cases in which a third party insurer reimburses only the policyholder and that person is the absent parent.

Response: We realize that these situations will result in additional burden on Medicaid agencies. However, the concern of Congress was that States, and not providers, pursue third parties in these situations. We advise States to bill the insurer using the assignment of benefits provision (§ 433.145(a)) whenever possible, thereby reducing the possibility of the absent parent receiving the insurance benefits. However, when a third party insurer has paid the absent parent, the burden is on the State to collect from the absent parent. We suggest that States pass legislation that

would require insurance carriers to pay Medicaid directly in these situations.

Comment: One commenter asked how utilization of Health Maintenance Organization (HMO) benefits would be accomplished under this directive. Will States still be required to pay claims after 30 days have elapsed? What recourse exists if a Medicaid recipient receives Medicaid-covered services from a Medicaid provider outside of the HMO plan.

Response: A parent that is under court order to provide medical support to a child (in this case, a Medicaid recipient), may choose to enroll the child in an HMO provided that it satisfies the requirements of the court order. If the parent is responsibile for paying the premiums and any copayments and deductibles directly related to the HMO, then the plan may constitute an available third party resource to Medicaid recipient. If a Medicaid recipient receives services that are not covered by the HMO, then the Medicaid agency would be liable for the services to the extent such services are covered under its State plan. However, if the Medicaid recipient receives Medicaid-covered services from a Medicaid provider outside of the HMO plan, the Medicaid agency may not be liable for payment. Section 1902(a)(17) of the Act provides authority for Medicaid to deny payment for services if the services may be provided or covered by a third party resource, such as an HMO.

In certain situations, an HMO may be liable for "out-of-plan" services. For example, out-of-plan providers of services may be reimbursed through the Medicaid agency for covered emergency services for which the HMO assumes financial responsiblity. Another example would be if the HMO plan offers out-of-plan services to an individual who needs medical services outside the geographical locality of the plan. In title IV–D court ordered medical support situations, where the HMO is liable for "out of plan" services and the provider bills Medicaid, the State is required to pay the provider and pursue reimbursement from the HMO. We advise States to contact their HCFA Regional Office if they have any questions concerning HMO services.

Comment: One commenter requested clarification of what constitutes prenatal care for pregnant women and preventive pediatric services.

Response: Prenatal care services for purposes of applying the "pay and chase" method of payment are services that relate to the pregnancy or to any other medical condition that may complicate the pregnancy. These services include routine prenatal care and treatment for complications likely to affect the pregnancy, such as hypertension, diabetes, and urinary tract infection.

According to the congressional intent as stated in the House of Representatives report (H.R. Rep. No. 453, 99th Cong., 1st Sess. 544 (1985)), Congress was particularly concerned that the administrative burden associated with TPL efforts not discourage participation in the Medicaid program by physicians and other providers of prenatal care. In most instances, the same practitioner that provides the prenatal care also handles the labor and delivery as well as the post-partum care. Generally, the practitioner bills for the entire range of services in a lump sum amount; prenatal care is not broken out from the labor and delivery and post-partum care. We believe it would be contrary to the congressional intent to require States to "pay and chase" for the prenatal services and cost avoid claims for labor and delivery and post-partum care. Therefore, we have revised § 433.139(b)(3)(i) to give States the option to "pay and chase" claims for labor and delivery and post-partum care. The costs associated with the inpatient hospital stay for labor and delivery and post-partum care must still be cost avoided.

For purposes of the Medicaid agency using the "pay and chase" method of payment, preventive pediatric care is defined as screening and diagnostic services to identify congenitial physical or mental disorders, routine examinations performed in the absence of complaints, and screening or treatment designed to avert various infections and communicable diseases from ever occurring in children under age 21. This includes immunizations, screening tests for congenital disorders, well child visits, preventive Medicine visits, preventive dental care and screening, and preventive treatment for infections and communicable diseases.

States would have the option of defining preventive pediatric care more broadly for this purpose if they so elect.

Comment: One commenter questioned how States would identify claims for pharmacy, medical supplies, and medical transportation that are related to prenatal and pediatric care.

Response: In dealing with pharmacy, medical supply and medical transportation claims, it may be necessary for States to place the burden on suppliers to identify when claims are related to pregnancy or other medical conditions that may complicate pregnancy and pediatric care. When the supplier bills Medicaid, it should indicate if the claim is for pregnancy-related or pediatric care in order to be ensured payment by Medicaid. If the Medicaid agency does not have knowledge that a claim is for pregnancy-related or pediatric care, it will most likely apply the cost-avoidance method of claims payment if a third party resource has probable liability for payment. States have the responsibility to ensure that the regulations are enforced. In some cases, the Medicaid agency may have received prior information that would enable it to "pay and chase". For example, Medicaid may have been previously billed for physician services related to pregnancy. The Medicaid agency could put a pregnancy indicator in the file and edit future claims for possible "pay and chase".

In the case of pharmacy claims, many States already have a waiver as provided for under § 433.139(e). In those States, the Medicaid agency is already "paying and chasing" pharmacy claims.

Comment: One commenter claimed that the amendment relating to Medicaid payment of title IV–D claims may actually serve to subvert or undermine child support orders that require the absent parent to provide health care. For example, the absent parent could ignore a court order for support with the knowledge that Medicaid will pay the title IV–D claim.

Response: The OSCE regulations at 45 CFR 306.51(b)(4), provide that if health insurance is available to the absent parent at reasonable cost and has not been obtained at the time the order is entered, the title IV–V agency will take steps to enforce the health insurance coverage required by the support order. This means that if the absent parent does not comply with the order by obtaining insurance that is available, the State may initiate contempt of court proceedings or order action under State law.

Comment: One commenter suggested that States be given a waiver from using the "pay and chase" method if States can demonstrate that payments are being made to providers for court-ordered dependent coverage and access to health care is not jeopardized.

Response: The statute does not provide for waivers. In the case described, there would be no need for the provider to bill Medicaid. The new "pay and chase" provision is intended to protect those providers who have difficulties collecting from third parties under the cost-avoidance method.

Comment: Several commenters requested a delay in the effective date for exceptions to cost avoidance in

order to allow ample time for implementation.

Response: While this final rule will be effective 30 days after publication, we will allow 90 days from receipt of a revised State plan preprint for a State agency to make systems changes, if necessary, and to submit its plan amendments and required attachments. We will not hold States out of compliance with the requirements of these final regulations if the States submit the necessary preprinted plan amendments and attachments by the appropriate dates. We believe that 90 days is sufficient time, since States first became aware of the exception to the cost avoidance requirements at the time COBRA was enacted (April 7, 1986). In addition, on March 3, 1987, we published a proposed rule addressing the provisions of COBRA.

B. Integration of the State Action Plan for Pursuit of Claims Utilizing MMIS

Comment: Several commenters requested that HCFA provide a draft action plan or a format with guidelines for developing an action plan. Some commenters were also concerned about the 90-day requirement for submitting an action plan.

Response: We plan to issue instructions for the State Medicaid Manual (HCFA Pub. 45–3) upon publication of this final rule. The instructions will provide States with guidelines for submitting a State action plan. In our March 3, 1987 proposed rule, we were proposing to require States to submit their action plans within 90 days from the date the final rule is published. We are revising this provision to require States to submit their action within 120 days from the date HCFA issues implementing State Medicaid Manual instructions.

Comment: Two commenters felt that a separate action plan was not necessary. They contend that the State plan submittal process should be adequate without submission of a separate action plan. The development and submission of an action plan and any changes that would have to be made and submitted to the regional office for approval would constitute a paperwork burden on the States.

Response: We believe that section 1902(a)(25)(A) of the Act is very clear and refers to a plan of action that is distinct from the State plan itself. We recognize that there will be paperwork burden imposed by this requirement. However, HCFA believes that based on Sen. Rept. No. 146, 99th Cong. 1st Sess., 312 (1984) Congress intended for all TPL activities to be included in an action plan and that the plan for pursuing TPL claims be monitored as a part of the review of the claims processing system. The State's action plan may incorporate by reference sections of the State plan that adequately describe particular TPL activities in accordance with action plan guidelines.

Comment: One commenter alleged that there has never been a requirement in part 11 of the State Medicaid Manual or in any regulation to track resubmittals as alleged in the preamble. Several commenters further stated that this requirement serves only to increase administrative costs and results in no additional TPL savings.

Response: Due to the comments received and the administrative expense of making system changes, as well as the fact that this requirement does not directly contribute to TPL savings, we have deleted the requirement to track resubmitted claims. However, we do still believe that the capability to track resubmitted claims is beneficial in evaluating Medicaid program performance. It provides a more effective methodology for measuring Medicaid TPL cost avoidance savings. It enables States to determine the cost effectiveness of cost avoidance of specific types of service by tracking how many initially denied claims actually come back for payment. It also assists States in making internal budget projections. Therefore, we recommend that States implement this system capability when reprocuring or replacing their MMIS.

Comment: Several commenters objected to the requirement for States to account for potentially recoverable claims. The usual procedure in several States when billing multiple claims at one time (for example, 3 months worth of drug claims), is to create an accounts receivable record for the total amount billed. This makes an individual claim count unavailable.

One commenter questioned if potentially recoverable claims could be accounted for manually. The commenter claimed that accounting for potentially recoverable claims and the amounts associated with them would require more automation and slow down third party operations.

Response: We have deleted the requirement to account for potentially recoverable claims from the systems requirements. It has also been removed from the performance standards for FY 1988, that were released to State Medicaid agencies in June 1987.

Comment: One commenter claimed that systematic TPL reports required in Element S of the SPR would require system enhancement. The commenter recommended extending the effective date of the performance standard.

Response: Based on HCFA's decision to revamp the entire system performance review as described in section IV.B, we have eliminated the inclusion of TPL management and administrative reports in element S.

C. Payment for Services (§ 447.15)

Comment: One commenter indicated that the proposed rule appears to mandate a State plan provision for recipient cost-sharing. Two commenters indicated that the rule should state that, in States that do not impose cost-sharing on individuals, the provider should not bill the recipient any amount for a covered service.

Response: Medicaid State agencies are not required to impose cost-sharing on recipients. Section 447.53 provides States with the option of imposing recipient cost-sharing in the State plan and prohibits the plan from imposing cost-sharing on certain categories of individuals. The provider restrictions in § 447.20(a) apply only in those States that have included recipient cost-sharing in their State plan. Under § 447.15, the provider is limited to the amount paid by the agency plus any deductible, coinsurance or copayment required by the plan and is not entitled to collect additional payment from the State. This final rule prohibits the provider from seeking to collect from the Medicaid recipient any amount that exceeds the amount, if any, allowed as recipient liability in the State plan (§ 447.20(a)).

Comment: One commenter interpreted the provider restriction against seeking to collect amounts from a representative of the individual, as a restriction against seeking to collect amounts from the individual's insurance and questioned why the provider cannot receive amounts from resources available to the recipient (§ 447.20(a)).

Response: The intent of this provision is to protect the Medicaid recipient from being charged for a service in excess of the amounts allowed under the State plan after considering the third party's liability. The phrase "representative of an individual" refers to a legal representative of an adult who has been determined incompetent or is incapable of handling his or her own affairs. Section 433.139(b)(1) requires a provider to determine the amount of liability from any third party, as defined in that section. The provider is not restricted from receiving amounts from third party resources available to the recipient (or his or her legal representative).

Comment: Four commenters contended that the proposed provider

restriction requirements (§ 447.20) will be difficult to monitor and are unenforceable. Two of the commenters contended that if a provider furnishes a covered service to a recipient and bills a third party payor, but not Medicaid, the State will have no means of monitoring the transaction and the provider will not be able to identify the amounts the recipient can be billed. One commenter contended that States could enforce the restriction if recipients complain when providers attempt to collect an amount in excess of the third party payment, but there would be no systematic way to ensure compliance. Three commenters contended that to enforce these payment restrictions, providers must have information as to the maximum allowable amount for each service covered under the State plan, but that considerable administrative time and effort would be required to compile, distribute, and update this information for all providers.

Response: We realize that enforcement of this requirement will impose additional burden on the States. However, we believe that the concern of Congress is that Medicaid recipients be protected from paying cost-sharing amounts when the amount of the cost-sharing plus the third party payment exceeds the Medicaid payment amount. Therefore, it is necessary that States monitor and enforce this statutory requirement in some way. Recipient complaints of excessive provider billing may be one way for States to become aware of a violation. However, States should ensure provider awareness of the requirements through communication and education. States have flexibility as to the extent of information they wish to furnish and the methodology of implementing the requirements. This includes whether or not to compile, distribute, and update maximum allowable amounts for each service covered under the State plan and amounts of recipient cost-sharing provided in the State plan. It also may be necessary to ensure recipient awareness of the limits of financial obligation to a provider as contained in the State plan and in these requirements (§ 447.20(a)).

Comment: One commenter contended that the proposed § 447.20(a) would create an unnecessary and costly burden on Medicaid providers who currently collect copayments from recipients at the time services are furnished. This could result in the providers collecting incorrect copayment amounts and may require the provider to delay collecting copayments from recipients until after payment is made by a third party and Medicaid, which the commenter contends has the effect of shifting the recipient's payment responsibility to the Medicaid provider. One commenter questioned whether it would be acceptable for a provider to reimburse recipients after overpayment is reported by the State.

Response: The basic intent of providing States with the option of imposing cost-sharing requirements under § 447.50 is to prevent recipient over-utilization of health care services covered under Medicaid by imposing a nominal payment obligation on recipients. This payment responsibility is not transferred from the recipient to the Medicaid provider, as the commenter suggests. The recipient is responsible for cost-sharing amounts up to the amounts provided for in the State plan, after consideration of any third party's liability. States have flexibility in the methodology of implementing, monitoring and enforcing the provider restriction requirements. States may communicate the information necessary for a provider to make a correct determination of the amount to seek from an individual under the requirements. States may also provide information to a provider of services to reimburse recipients for any overpayments they have made at the time the service was furnished. However, the State must ensure that the recipient cost-sharing liability, in any case, does not exceed the requirements of these provisions.

Comment: Two commenters questioned whether the intent of this provision is to limit Medicaid payment in Medicare/Medicaid crossover claims and whether there are any exceptions for these types of claims.

Response: The intent of this provision is to protect the amount of cost-sharing liability of Medicaid recipients. Medicaid is the payor of last resort. Therefore, when an individual is entitled to Medicare and eligible for Medicaid, Medicare, like any other third party, is the primary payor. After the amount of Medicare's liability is determined, the State pays the claim to the extent that payment allowed under the applicable payment schedule (as explained below) exceeds the amount of Medicare's payment, but only up to the upper limits specified in the regulations. For example, as specified in § 447.304, payments made under the plan for deductibles and coinsurance payable on an assigned Medicare claim for noninstitutional services may be made only up to the reasonable charge under Medicare, even if the payment amount in the State plan is higher.

An exception to this limitation that appears in section 1902(h) of the Act allows States to make Medicaid payments in excess of the Medicare cost principles to hospitals designated as those serving a disproportionate share of low-income patients with special needs.

In establishing the applicable payment schedule amount for payment of Medicare Part A (Hospital Insurance) and Part B (Supplemental Medical Insurance) deductibles and coinsurance for Medicare/Medicaid crossover claims, the State has the option of setting the applicable payment amount at the rate paid when the recipient is not also a Medicare beneficiary, or it can choose to set a higher amount up to the Medicare allowable rate, which would mean that after deducting Medicare's liability for the service, the State would be paying part or all of the amount of the Medicare deductible and coinsurance. The State's payment amount for Medicare/Medicaid crossover claims must be reflected in the payment schedule set forth in the State plan.

Section 301 of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–366) amends sections 1902(a)(10)(e) and 1905(p) of the Act to require the 50 States and the District of Columbia to include in their Medicaid programs payment of Medicare cost-sharing (Medicare Part A and Part B premiums, deductibles, and coinsurance) on behalf of qualified Medicare beneficiaries. A qualified Medicare beneficiary is an individual who—

- Is entitled to Medicare Part A;
- Has income (as determined for Supplemental Security Income (SSI) purposes) that does not exceed 100 percent of the Federal poverty level; and
- Has resources (as determined for SSI purposes) that do not exceed the maximum amount established for SSI eligibility.

The application of § 447.20 to qualified Medicare beneficiaries will be dealt with in a separate rule-making document which implements section 301 of Pub. L. 100–366. We are revising part 447 in that document.

Comment: One commenter indicated that States choosing to provide for a reduction of payment to providers who violate the provider restrictions will need to identify when such a reduction will be applied and how the State will determine the appropriate amount of any reduction. The commenter believes that State agencies may have to

promulgate administrative rules, which are very expensive and time consuming.

Response: As discussed in the preamble to the proposed rule, (52 FR 6356) we are allowing States flexibility as to whether or not the agency imposes a reduction in any payment due a provider that violates the restriction. However, we are removing the proposed requirement in § 447.21(a) that the State describe, as part of its State plan, its policy regarding the reduction of payments to providers permitted under paragraph (b) of the section. This is to provide States flexibility concerning whether or not to impose a reduction, which could be on a case-by-case basis, as determined by the agency, and of the amount of the reduction, on a case-by-case basis, within the confines of the requirements.

IV. Summary of Changes in the Final Regulations

As stated in our discussion of the comments and responses, we have made some changes to the proposed regulations published March 3, 1987. With the exception of the changes identified below, the final regulations reflect the proposals made in the March 3, 1987 proposed rule. In addition, we are making minor editorial changes throughout the regulations text.

A. Monitoring the State Action Plan Through the Review of the State Mechanized Claims Processing and Information Retrieval System

We are revising the proposed § 433.138(k) to require that the action plan be submitted within 120 days from the date that implementing manual instructions are issued, except as specified below, rather than 90 days from the publication of this final rule as we had proposed. Also, we are specifying that the HCFA regional office will review and either approve or disapprove a State's action plan. Should a State not have an approved MMIS on the date of issuance of the State Medicaid Manual but implements a MMIS subsequent to the date of the issuance, the State must submit its action plan within 90 days from the date the system is operational.

B. Performance Standards

As previously discussed, HCFA had, in the March 3, 1987 proposed rule, proposed new TPL factors and elements that were to appear as Standard 8 of the SPR. These standards were to be effective October 1, 1987. Due to the delay in publication, we reviewed them for test purposes only. HCFA's current intention is to revamp the entire SPR pursuant to 1903(r)(6)(F) of the Act. Since the SPR will undergo an extensive revision as to the manner in which standards are both stipulated and applied, HCFA has chosen to wait until that time before introducing new TPL measurements that it may find to be appropriate in the context of the revamped SPR. Also, the Congress has changed the TPL requirements by requiring an action plan and excluding some types of claims from cost avoidance through COBRA. HCFA believes that States should have some lead time to implement the new statutory requirements. We find support for this action in the regulations at § 433.123(b) which state that "for changes in systems requirements or other conditions for approval, HCFA will allow an appropriate period for Medicaid agencies to meet the requirement, determining this period on the basis of the requirement's complexity and other relevant factors." In order to allow lead time for those activities involving integration of TPL into the State system, it is appropriate to allow an extensive period of time for implementation of this new requirement. For these reasons, HCFA has changed its position regarding the effective date of the proposed Standard 8. We will publish detailed instructions in the State Medicaid Manual specifying what information States must provide in the action plan. Following publication of these instructions, we will then issue revised expectations for the performance of State systems through the SPR.

C. Typographical Error

We are revising the typographical error that appeared in the proposed § 433.138(k)(3). The proposed rule reads, "* * * and if the conditions are not not will be subject to FFP * * *" The phrase should read, "* * * and if the conditions are not met will be subject to FFP * * *"

D. Payment of Claims

Based on the comments received, we are making the following changes to the proposed rule. We are revising § 433.139(b)(2) to allow for payment of claims involving third parties for labor and delivery and post-partum care.

We are revising the proposed § 433.139(b)(3)(ii)(A) to give States flexibility in carrying out the requirements of section 9503(a)(25)(F) of COBRA. States will be given the option to choose, in their State plan, whether or not providers will be required to bill the third party in title IV–D court ordered medical support situations. We are revising this provision to require States to have and specify a method for monitoring providers' compliance with the requirement that providers wait 30 days from the date of a service to bill Medicaid if they have billed a third party.

We are removing the requirement in the proposed § 433.139(b)(3)(ii)(B) that States assure that providers acknowledge Medicaid payment as payment in full.

E. Waiver of Required Use of Cost Avoidance Method

We are revising § 433.139(e) to give States more flexibility when applying for waivers. As revised, § 433.139(e) requires the States to submit documentation that their method is at least as cost effective as the cost avoidance method. As described in section VII, we are making this change without prior notice and opportunity for comment. Our reasons for this action are included in the discussion at section VII.

F. Provider restriction

We are revising § 447.20(b) to read, "A provider may not refuse to furnish services * * *". The proposed rule read "A provider must not refuse to furnish services * * *". This change makes the terms used in the final rule consistent with the statute. This change does not imply any diminution of the prohibition against refusal to furnish services.

G. Reduction of Payments to Providers

Based on comments received, we are removing the proposed requirement in § 447.21(a) that the State describe, as part of its State plan, its policy regarding the reduction of payments to providers permitted under paragraph (b).

V. Other Related Regulation Changes

A. Diagnosis and Trauma Code Edits (433.138(e))

On February 27, 1987, HCFA published final regulations (52 FR 5967) that were effective May 28, 1987. The preamble of the final rule (52 FR 5971) provided for an opportunity for comments from the public by indicating that "if we (HCFA) receive substantial complaints regarding diagnosis and trauma code edits, we will reevaluate the code requirements regarding this activity." We have received several comments from State Medicaid agencies and are revising § 433.138(e) accordingly.

Section 433.138(e), Diagnosis and Trauma Code Edits, requests that State agencies act to identify those paid claims that contain certain diagnosis or trauma codes and follow up on that information for purposes of identifying potentially liable third parties.

In order to conduct the diagnosis and trauma code edits, State use claims data that are generated periodically and include a listing of paid claims, the amount of the claim, and the diagnosis code under which the claim was submitted. Diagnosis codes are indexed and defined in the International Classification of Disease, 9th Revision, Clinical Modification (ICD–9–CM), Volume I. The diagnosis codes found in 800 through 999 series are codes that could denote a possible trauma-related injury, with the exception of code 994.6, Motion Sickness, which was found to be nonproductive in identifying third party resources.

In response to our preamble suggestion that trauma code edits would be re-evaluated in light of comments, we received comments from several Medicaid State agencies requesting that we eliminate certain specific codes from the diagnosis and trauma code edits. The main comments and our responses to those comments are as follows:

Comment: Several commenters indicated that certain codes found in the 800 through 999 series have proven to be unproductive in detecting possible third party liability. One commenter suggested deleting code 994.2 (effect of hunger). Another commenter pointed out that there are several codes between 910.2 and 919.55 indicating insect bites and blisters (excluding burn-related) that would generally not be related to potential liability.

Response: In response to these comments, we are amending § 433.138(e) to allow States to seek authorization from HCFA to discontinue specific diagnosis and trauma code edits. State Medicaid agencies must submit documentation that proves that specific diagnosis or trauma code edits are not cost-effective. We believe that as States gain experience in conducting diagnosis and trauma code edits for the purposes of identifying third party resources, they will be in a better position to identify those codes that are non-productive.

B. Timely Claims Payment (§ 447.45)

Section 447.45(f)(1)(v) requires the State agency to conduct prepayment claims reviews consisting of checks for third party liability within the requirements of § 433.135. The reference to § 433.135 is no longer a valid reference. At the time that § 447.45(f)(1)(v) was effectuated (August 23, 1979), the reference to § 433.135 was correct. All of the third party liability provisions were included under § 433.135 of part 433, subpart D. In the last few years, several third party liability requirements have been added and part 433, subpart D, has been revised and expanded to include additional sections. Based on these changes, the reference to § 433.135 is no longer correct.

The language in the final rule published May 25, 1979 (44 FR 30341) makes clear that § 447.45(f)(1)(v) was intended to incorporate specific "requirements" concerning checks for third party liability. The current § 433.135 contains no such requirements, but simply sets forth the scope and basis of the subpart. Section § 433.137 is the regulation that currently sets forth the requirements that § 447.45(f)(1)(v) was intended to incorporate.

VI. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any major rule. A major rule is defined as any document that is likely to: (1) Have an annual effect on the economy of $100 million or more, (2) cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions, or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The regulation changes we are making in this final rule will neither result in an annual economic impact of $100 million or more nor meet any other criterion of the Executive Order. We have determined that this rule is not a major rule under Executive Order 12291 and that a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare and publish a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. Under the RFA, we do not consider either States or individuals to be small entities. Also, we do not believe that the effects on providers of services are either estimable or significant. Therefore, we have determined, and the Secretary certifies, that these regulations will not result in a significant economic impact on a substantial number of small entities.

VII. Waiver of Proposed Rulemaking

We ordinarily published a general notice of proposed rulemaking in the **Federal Register**, and invite prior public comment on proposed rules. Such notice includes a statement of the time, place, and nature of rulemaking proceedings, reference to the legal authority under which the rule is proposed, and the terms and substance of the proposed rule or a description of the subjects and issues involved. However, this procedure can be waived when an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and its reasons in the rules issued. We are waiving proposed rulemaking for § 433.139(e) of this rule in order to allow State agencies immediately to request a waiver to the cost avoidance method of paying for TPL claims.

On June 4, 1984, we published in the **Federal Register** a notice of proposed rulemaking (42 FR 23078) proposing that State Medicaid agencies use the cost avoidance method of payment for all potential third-party liability claims. In our final regulations issued on November 12, 1985 (50 FR 46652), we amended this requirement to allow States to request a waiver. Such a waiver had to be requested within 60 days (January 13, 1986) of the publication of that final rule.

The final rule further provided that the waiver was granted for an indefinite period unless otherwise specified in the HCFA approval notice. Thus, many States have already received waivers for certain types of medical services. Conversely, several States were denied waivers in 1986 because they did not have enough claims experience and/or documentation to prove that the "pay and chase" method they were using was as effective as the cost avoidance method.

We believe that a revision to the regulations to permit waiver requests to be filed again will be of great benefit to States, providers, and Medicaid recipients, and have no adverse impact on any party. For example, there are still a few States that do not cover pharmacy services. In the absence of this regulatory change, if these States chose to provide this coverage, they currently would be required to cost avoid pharmacy claims regardless of the cost effectiveness and disregarding the fact that HCFA had previously approved waivers for pharmacy claims in other States.

In addition, current regulations provide that HCFA may rescind a State's waiver at any time it is determined the State's TPL recovery method is no longer as effective as cost avoidance. It seems equitable and good

practice that the reverse be permitted; for example, the State be given the opportunity to request a waiver whenever the cost avoidance methodology is proven not to be the most effective.

Some pharmacists have also argued that they are not set up to send claims to various third parties for payment. This creates an artificial disincentive to provide coverage for pharmacy services, harming Medicaid recipients. In cases in which the State has a waiver, the provider will have the option of billing the third party or billing the State. We believe this will encourage provider participation which will in turn benefit Medicaid recipients.

In conclusion, we believe these regulations will allow the States substantial flexibility to achieve cost savings in administering their Medicaid programs, while having no adverse impact on any party. Therefore, we believe that publication of a notice of proposed rulemaking is unnecessary and contrary to the public interest. We also believe that it is important to the States to have these rules effective as soon as possible, so as to expedite the approval of waivers under them, and that no compelling purpose would be served by delaying the final rulemaking process.

VII. Information Collection Requirements

Sections 433.138 (e) and (k), 433.139 (b)(3)(ii), and (e)(i) of this final rule contain information collection requirements that are subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980. Public reporting burden for this collection of information is estimated to be 42 hours per response. Organizations and individuals desiring to submit comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should direct them to the Office of Information and Regulatory Affairs, ATTN: Justin Kopca, Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

List of Subjects

42 CFR Part 433

Administrative practice and procedure, Claims, Grant programs—health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 447

Accounting, Administrative practice and procedure, Grant programs—health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42 CFR chapter IV, subchapter C is amended as set forth below:

SUBCHAPTER C—MEDICAL ASSISTANCE PROGRAMS

PART 433—STATE FISCAL ADMINISTRATION

A. Part 433 is amended as set forth below:

1. The authority citation for part 433 continues to read as follows:

Authority: Secs. 1102, 1137, 1902(a)(4), 1902(a)(25), 1902(a)(45), 1903(a)(3), 1903(d)(2), 1903(d)(5), 1903(o), 1903(p), 1903(r), and 1912 of the Social Security Act; 42 U.S.C. 1302, 1320b–7, 1396a(a)(4), 1396a(a)(25), 1396a(a)(45), 1396b(a)(3), 1396b(d)(2), 1396b(d)(5), 1396b(o), 1396b(p), 1396b(r) and 1396k, unless otherwise noted.

2. Section 433.138 is amended by revising paragraphs (a) and (e); and adding a new paragraph (k) to read as follows:

§ 433.138 Determining liability of third parties.

(a) *Basic provisions.* The agency must take reasonable measures to determine the legal liability of third parties to pay for services furnished under the plan. At a minimum, such measures must include the requirements specified in paragraphs (b) through (k) of this section.

* * * * *

(e) *Diagnosis and trauma code edits.* (1) Except as specified under paragraph (e)(2) of this section, the agency must take action to identify those paid claims for Medicaid recipients that contain diagnosis codes 800 through 999 International Classification of Disease, 9th Revision, Clinical Modification, Volume 1 (ICD–9–CM) inclusive, for the purpose of determining the legal liability of third parties so that the agency may process claims under the third party liability payment procedures specified in § 433.139 (b) through (f).

(2) The agency may exclude code 994.6, Motion Sickness, from the edits required under paragraph (e)(1) of this section. In addition, the agency may exclude other specific diagnosis and trauma codes from those edits if the following requirements are met:

(i) The agency submits documentation to the HCFA Regional Office that proves that the agency's pursuit of those specific codes has been found not to be cost effective, and requests approval by HCFA to exclude those codes.

(ii) HCFA approves the agency's request.

* * * * *

(k) *Integration with the State mechanized claims process and information retrieval system. Basic requirement—Development of an action plan.* (1) If a State has a mechanized claims processing and information retrieval system approved by HCFA under Subpart C of this part, the agency must have an action plan for pursuing third party liability claims and the action plan must be integrated with the mechanized claims processing and information retrieval system.

(2) The action plan must describe the actions and methodologies the State will follow to—

(i) Identify third parties;

(ii) Determine the liability of third parties;

(iii) Avoid payment of third party claims as required in § 433.139;

(iv) Recover reimbursement from third parties after Medicaid claims payment as required in § 433.139; and,

(v) Record information and actions relating to the action plan.

(3) The action plan must be consistent with the conditions for reapproval set forth in § 433.119. The portion of the plan which is integrated with MMIS is monitored in accordance with those conditions and if the conditions are not met; it is subject to FFP reduction in accordance with procedures set forth in § 433.120. The State is not subject to any other penalty as a result of other monitoring, quality control, or auditing requirements for those items in the action plan.

(4) The agency must submit its action plan to the HCFA Regional Office within 120 days from the date HCFA issues implementing instructions for the State Medicaid Manual. If a State does not have an approved MMIS on the date of issuance of the State Medicaid Manual but subsequently implements an MMIS, the State must submit its action plan within 90 days from the date of the system is operational. The HCFA Regional Office approves or disapproves the action plan.

3. In § 433.139, the introductory language to paragraph (b) is republished, paragraph (b)(2) is revised, a new paragraph (b)(3) is added, and paragraph (e) is revised to read as follows:

§ 433.139 Payment of claims.

* * * * *

(b) *Probable liability is established at the time claim is filed.* Unless the agency has received approval to use an alternative method of payment as specified under paragraph (b)(2) of this section or is required to use the method for paying claims for the situation

described in paragraph (b)(3) of this section, the agency must pay claims involving probable third party liability as follows

* * * * *

(2) The agency may pay the full amount allowed under the agency's payment schedule for the claim and then seek reimbursement from any liable third party to the limit of legal liability if either of the following circumstances is met:

(i) The agency has obtained approval of a waiver of the requirement under paragraph (b)(1) of this section. The waiver must be in accordance with the provisions of paragraph (e) of this section.

(ii) The claim is for labor and delivery and post-partum care. (Costs associated with the inpatient hospital stay for labor and delivery and post-partum care must be cost avoided.)

(3) The agency must pay the full amount allowed under the agency's payment schedule for the claim and seek reimbursement from any liable third party to the limit of legal liability (and for purposes of paragraph (b)(3)(ii) of this section, from a third party, if the third party liability is derived from an absent parent whose obligation to pay support is being enforced by the State title IV–D agency), consistent with paragraph (f) of this section, if—

(i) The claim is for prenatal care for pregnant women, or preventive pediatric service (including early and periodic screening, diagnosis and treatment services provided for under Part 441, Subpart B) of this chapter, that is covered under the State plan; or

(ii) The claim is for a service covered under the State plan that is provided to an individual on whose behalf child support enforcement is being carried out by the State title IV–D agency. The agency prior to making any payment under paragraph (b)(3)(ii) of this section must assure that the following requirements are met:

(A) The State plan specifies whether or not providers are required to bill the third party.

(B) The provider certifies that before billing Medicaid, if the provider has billed a third party, the provider has waited 30 days from the date of the service and has not received payment from the third party.

(C) The State plan specifies the method used in determining the provider's compliance with the billing requirements.

* * * * *

(e) *Waiver of required use of cost avoidance method.* (1) The requirement to use the claims payment method specified under paragraph (b)(1) of this section may be waived if—

(i) The agency submits adequate documentation that the method specified under paragraph (b)(2) of this section is as cost effective as the method required under paragraph (b)(1) of this section to the HCFA Regional Office and requests approval of its use (Administrative costs must be considered in the computation of the cost effectiveness of the State's alternative method); and

(ii) The HCFA Regional Office approves the State's request for a waiver of the requirement.

(2) The HCFA Regional Office will review a State's request to have the requirement under paragraph (b)(1) of this section waived and notify the State of its approval or disapproval determination within 30 days of receipt of a properly documented request. The Regional Office will request additional information from the State, if necessary.

* * * * *

(3) If a waiver is granted, the agency must submit adequate documentation every three years to substantiate its continued eligibility for the waiver, that is, that its method is as cost effective as the cost avoidance method. A State that is granted a waiver must notify the Regional Office of any event that occurs that changes the conditions upon which the waiver was approved. The Regional Office may rescind the waiver at any time that it determines that the State no longer meets the criteria for approving the waiver. If the waiver is rescinded, the State has 6 months from the date of the rescission notice to implement the method required under paragraph (b)(1) of this section.

* * * * *

PART 447—PAYMENTS FOR SERVICES

A. Part 447 is amended as set forth below:

1a. The authority citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, Subpart A (42 U.S.C. 1302) unless otherwise noted.

b. The table of contents for part 447 is amended by adding §§ 447.20 and 447.21 as follows:

Subpart A—Payments: General Provisions

* * * * *

Secs.

447.20 Provider restrictions: State plan requirements.

447.21 Reduction of payments to providers.

* * * * *

2. A new § 447.20 is added to read as follows:

§ 447.20 Provider restrictions: State plan requirements.

A State plan must provide for the following:

(a) In the case of an individual who is eligible for medical assistance under the plan for service(s) for which a third party or parties is liable for payment, if the total amount of the established liability of the third party or parties for the service is—

(1) Equal to or greater than the amount payable under the State plan (which includes, when applicable, cost-sharing payments provided for in §§ 447.53 through 447.56), the provider furnishing the service to the individual may not seek to collect from the individual (or any financially responsible relative or representative of that individual) any payment amount for that service; or

(2) Less than the amount payable under the State plan (including cost sharing payments set forth in §§ 447.53 through 447.56), the provider furnishing the service to that individual may collect from the individual (or any financially responsible relative or representative of the individual) an amount which is the lesser of—

(i) Any cost-sharing payment amount imposed upon the individual under §§ 447.53 through 447.56; or

(ii) An amount which represents the difference between the amount payable under the State plan (which includes, where applicable, cost-sharing payments provided for in §§ 447.53 through 447.56) and the total of the established third party liability for the services.

(b) A provider may not refuse to furnish services covered under the plan to an individual who is eligible for medical assistance under the plan on account of a third party's potential liability for the service(s).

2. A new § 447.21 is added as follows:

§ 447.21 Reduction of payments to providers.

If a provider seeks to collect from an individual (or any financially responsible relative or representative of that individual) an amount that exceeds an amount specified under § 447.20(a)—

(a) The Medicaid agency may provide for a reduction of any payment amount otherwise due to the provider in addition to any other sanction available to the agency; and

(b) The reduction may be equal to up to three times the amount that the

provider sought to collect in violation of § 447.20(a).

3. Section 447.45 is amended by revising paragraphs (f)(1) and (f)(2) to read as follows:

§ 447.45 Timely claims payment.

* * * * *

(f) *Prepayment and postpayment claims review.* (1) For all claims, the agency must conduct prepayment claims review consisting of—

(i) Verification that the recipient was included in the eligibility file and that the provider was authorized to furnish the service at the time the service was furnished;

(ii) Checks that the number of visits and services delivered are logically consistent with the recipient's characteristics and circumstances, such as type of illness, age, sex, service location;

(iii) Verification that the claim does not duplicate or conflict with one reviewed previously or currently being reviewed;

(iv) Verification that a payment does not exceed any reimbursement rates or limits in the State plan; and

(v) Checks for third party liability within the requirements of § 433.137 of this chapter.

(2) The agency must conduct post-payment claims review that meets the requirements of parts 455 and 456 of this chapter, dealing with fraud and utilization control.

* * * * *

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

Dated: August 10, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

Approved: December 18, 1989.

Louis W. Sullivan,

Secretary.

[FR Doc. 90-947 Filed 1-12-90; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 91046-0006]

Groundfish of the Bering Sea and Aleutian Islands

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

ACTION: Final notice of initial specifications of groundfish for 1990; reapportionment of reserves; prohibition of directed fishing; request for comments.

SUMMARY: NOAA announces final specifications of total allowable catches (TACs) and initial apportionments for each category of groundfish in the Bering Sea and Aleutian Islands (BSAI) area for the 1990 fishing year. This action also reapportions some of the reserve to U.S. fishing vessels working in joint ventures with foreign processing vessels (JVP) and solicits comments on this reapportionment. Additionally, this action prohibits JVP directed fishing for several groundfish species, because their JVP apportionments will be needed for bycatch in other targeted JVP fisheries receiving much larger apportionments.

This action is necessary to establish harvest limits for groundfish in the 1990 fishing year. This action is based on public comments, the best available information on the biological condition of groundfish stocks, the socioeconomic condition of the fishing industry, and consultation with the North Pacific Fishery Management Council (Council) at its meeting of December 5–8, 1989. The intended effect of this action is the conservation and management of groundfish resources in the BSAI area.

DATES: Effective at 0901 Greenwich Mean Time (GMT or 0001 Alaska Standard Time (AST)) on January 1, 1990, through 0900 GMT on January 1, 1991 (2400 AST, on December 31, 1990), or until changed by subsequent notice in the **Federal Register.**

Comments on the reapportionment part of this notice are invited until January 24, 1990.

ADDRESS: Send comments to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802-1668. The final Stock Assessment and Fishery Evaluation (SAFE) report may be requested from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone 907-271-2809.

FOR FURTHER INFORMATION CONTACT: Jay J. C. Ginter, Fishery Management Biologist, NMFS, 907-586-7229.

SUPPLEMENTARY INFORMATION: Groundfish fisheries in the BSAI area are governed by Federal regulations (at 50 CFR 611.93 and part 675) which implement the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP). The FMP was developed by the Council and approved by the Secretary of Commerce (Secretary) under the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The FMP and implementing regulations require the Secretary, after consultation with the North Pacific Fishery Management Council (Council), to annually specify the TAC, initial domestic annual harvest (DAH), and initial TALFF for each target species and the "other species" category as soon as practicable after December 15 (§ 675.20 (a)(7)). The sum of the species' TACs must be within the optimum yield (OY) range of 1.4 million to 2.0 million metric tons (mt) (§ 675.20 (a)(2)). For 1990, this sum of TACs is equal to 2.0 million mt, as indicated in Table 1.

A notice specifying preliminary initial TAC, reserve, DAH, and TALFF amounts for the 1990 fishing year was published on November 7, 1989, and comments were invited through December 1, 1989 (54 FR 46748). One written comment was received and is summarized and responded to below. In addition, oral comments were heard and public consultation with the Council occurred during the Council's December 5–8, 1989 meeting in Anchorage, Alaska. Council recommendations made at this meeting account for differences between the preliminary specifications and those published in this notice.

The specified TACs for each species are based on the most recent biological and socioeconomic information. The Council, its Advisory Panel (AP), and Scientific and Statistical Committee (SSC), at their September and December 1989 meetings, reviewed current biological information about the condition of groundfish stocks in the BSAI area. This information was compiled by the Council's BSAI groundfish Plan Team and presented in the SAFE report for the BSAI groundfish fisheries in the 1990 fishing year. The Plan Team annually produces such a document as the first step in the process of specifying TACs. The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters. From these data and analyses, the Plan Team estimates an acceptable biological catch (ABC) for each species category.

A summary of preliminary ABCs for each species for 1990 and other biological data from the September 1989 draft SAFE report were provided in the notice of preliminary 1990 specifications (54 FR 46748, Nov. 7, 1989). The Plan Team's recommended ABCs were reviewed by the SSC, AP, and Council at their September 1989 meetings. Based on the SSC's comments on technical methods, and new biological data not

available in September, the Plan Team revised its ABC recommendations in the final SAFE report dated November 1989. The revised ABC recommendations were again reviewed by the SSC, AP, and Council at their December 1989 meetings to produce the Council's final ABC estimates. The Council then developed its TAC recommendations to the Secretary based on the final ABCs as adjusted for other biological and socioeconomic considerations. For each species category, the recommended TAC for 1990 is equal to or less than that species' final ABC. Therefore, the Secretary finds that the recommended TACs are consistent with the biological condition of groundfish stocks.

A principal consideration for the Council in developing its 1990 TAC recommendations was assuring that the sum of the species TACs did not exceed the maximum OY of two million mt. The Secretary finds also that the recommended TACs are consistent with socioeconomic goals and objectives of the FMP.

Apportionment of TAC

As required under § 675.20(a)(3), the amount of TAC for each species initially is reduced by 15 percent. The sum of these 15 percent amounts is designated as the reserve. This reserve is not species-specific and any amount of the reserve may be reapportioned to a target species or the "other species" category during the year, providing that such reapportionments do not result in overfishing (§ 675.20(a)(3)).

The remaining 85 percent of TAC is the initial TAC (ITAC). This amount is apportioned between DAH and TALFF such that TALFF, for each target species and the "other species" category at the beginning of the year, equals the ITAC minus DAH. For 1990, initial TALFF is zero for all species because the DAH equals ITAC.

Each DAH amount is further apportioned between its two components, JVP and the expected domestic annual processing (DAP) category which includes U.S. vessels that process their catch onboard or deliver it to U.S. fish processors. The JVP equals DAH minus DAP to be consistent with the intent of the domestic processor preference amendments to the Magnuson Act (P.L. 95-354). The initial amounts of DAP and JVP are determined by the Director, Alaska Region, NMFS (Regional Director), in consultation with the Council. The initial DAP and JVP amounts for each target species and the "other species" category equal the actual DAP and JVP of the previous year plus any additional amounts the Regional Director projects will be used by the U.S. fishing industry during the coming year, subject to available TAC and accommodation of DAP. This projection is based on the latest reliable information that is available, including industry surveys, market data and the stated intentions of U.S. fishing industry representatives (§ 675.20(a)(4)). The final TACs, ITACs, reserve and initial apportionments of groundfish between DAP and JVP in the BSAI area for 1990 are given in Table 1 of this notice.

Sablefish Gear Allocation

Amendment 13 to the FMP, approved by the Secretary on November 1, 1989, and implemented by a final rule published on December 6, 1989 (54 FR 50386), provides for the subdivision of the sablefish TACs for the Bering Sea and Aleutian Islands subareas between users of trawl and fixed fishing gears. Fixed fishing gear refers to either hook-and-line or pot gear. Gear allocations are specified at § 675.24 in the following proportions:

Bering Sea subarea: trawl gear—50 percent; fixed gear—50 percent, and *Aleutian Islands subarea:* trawl gear—25 percent; fixed gear—75 percent.

Accordingly, for the 1990 fishing year, based on the specifications in Table 1, trawl gear and fixed gear catch limits of sablefish in each subarea are equivalent to the following shares of the TACs and ITACs.

Subarea	Gear	Percent of TAC	Share of TAC (mt)	Reserve, 0.15×TAC [1]	Gear share [2]
Bering Sea	Trawl	50	1,350	203	1,147
Bering Sea	Fixed	50	1,350	203	1,147
Aleutian Islands	Trawl	25	1,125	169	956
Aleutian Islands	Fixed	75	3,375	506	2,869

[1] Calculation of reserve is rounded to the nearest whole mt.
[2] Sum of both gear shares in each subarea is equal to the ITAC in mt.

Prohibited Species Catch (PSC) Limit Apportionments

Crab and Halibut

Amendment 12A to the FMP (54 FR 32642, August 9, 1989; corrected at 54 FR 37469, September 11, 1989) established PSC limits on the bycatch of red king crab and *C. bairdi* Tanner crab in specific zones of the Bering Sea subarea, and for Pacific halibut throughout the BSAI area. These PSC limits are (50 CFR 675.21):

—200,000 red king crabs applicable to Zone 1;
—One million *C. bairdi* Tanner crabs applicable to Zone 1;
—Three million *C. bairdi* Tanner crabs applicable to Zone 2;
—4,400 metric tons (mt) of Pacific halibut (primary PSC limit) applicable to Zones 1 and 2H; and
—5,333 mt of Pacific halibut (secondary PSC limit) applicable to the entire BSAI area.

Each PSC limit is apportioned into PSC allowances that are assigned to each of four specified fisheries. The PSC allowances in Table 2 of this notice were derived in consultation with the Council at its meeting of December 5-8, 1989, through the use of a mathematical prediction procedure based on statistical information on fishery performance in previous years. Fishing industry representatives (of DAP and JVP interests) then recommended modifications according to their mutual anticipation of fishery performance in the 1990 fishing year. Therefore, the final PSC allowances given in Table 2 differ from the proposed PSC allowances due to differences in the groundfish apportionments from those proposed, differences between the September 1989 and December 1989 assumptions of timing and location of fisheries, and testimony of fishing industry representatives on an acceptable division of the PSC limits between DAP and JVP fisheries.

Groundfish

No PSC limits for groundfish species are specified in this notice. Amendment 12 to the FMP (54 FR 18519, May 1, 1989) provides for annual specification of PSC limits for groundfish species or species groups for which the TAC can be completely harvested by domestic (i.e. DAH) fisheries. In practice, these PSC

limits apply only to JVP fisheries for species which have a zero JVP apportionment. Proposed PSC limits for groundfish were published in Table 3 of the preliminary groundfish specifications notice (54 FR 46748); however, all anticipated JVP incidental catches of groundfish can be accommodated from the reserve. Reapportionment of groundfish from the reserve for this purpose will reduce waste by allowing such incidental catches to be retained and used since any JVP catch of groundfish for which there is a zero amount specified must be treated in the same manner as a prohibited species. No directed JVP fishing will be allowed on amounts of groundfish provided for bycatch purposes. No PSC limits are proposed for foreign fisheries since no allocations are recommended for foreign directed fishing.

Reapportionment

This action makes an initial reapportionment from reserve to JVP under authority of § 675.20(b)(1)(i) of amounts that are likely to be harvested incidentally during JVP directed fishing for yellowfin sole and other flatfish. The purpose of this action is to provide JVP fisheries with the option to retain this bycatch which otherwise would have to be treated in the same manner as prohibited species and be discarded. This reapportionment subtracts a total of 47,702 mt from reserve and adds it to the JVP species categories as follows:

Pollock in the Bering Sea subarea—22,451 mt; Pacific cod—7,025 mt; Arrowtooth flounder—33 mt; rock sole—16,359 mt; and "other species"—1,834 mt.

The TACs of these species are not expected to be fully used by DAP fisheries. Although the NMFS projected DAP capacity in 1990 for pollock in the Bering Sea subarea exceeds its TAC, the reserve amount reapportioned to JVP pollock in that subarea could be harvested by DAP fisheries in the Aleutian Islands subarea. The DAP of yellowfin sole in 1990 also is likely to be less than projected, unless significant new markets for DAP yellowfin sole develop in 1990. In this event, amounts of reserve could be reapportioned to DAP sufficient to satisfy DAP demand for this species. Therefore, based on expected DAP performance, NMFS anticipates that this initial reapportionment of reserve to JVP will not limit DAP fishing later in 1990.

Directed Fishing Prohibition

When the catch of a species approaches its TAC (or any apportionment of the TAC to DAP, JVP or foreign fishing), the Secretary is directed under § 675.20(a)(8) to prohibit further directed fishing for that species. Directed fishing is defined at § 675.2. Retained bycatches are counted against the remaining TAC for that species. The purpose of this provision is to minimize the waste of groundfish resources from required discarding by slowing the harvest rate of any groundfish species as its total catch approaches its TAC. However, when the catch of a species reaches its TAC (or JVP apportionment, for example), any further bycatches of it may not be retained and must be treated in the same manner as a prohibited species (§ 675.20(a)(9)).

The Director, Alaska Region, has determined that the amounts of certain groundfish species apportioned to JVP are insufficient for directed fishing without excessive waste later in the fishing year from discard as "prohibited species" and that these amounts are necessary for bycatch in JVP fisheries for other groundfish species. These species and the amounts necessary for bycatch in other fisheries are the same as those reapportioned from the reserve by this notice.

Therefore, the Secretary prohibits JVP directed fishing for pollock in the Bering Sea subarea, and Pacific cod, arrowtooth flounder, rock sole, and "other species" in the BSAI management area for the remainder of the fishing year.

Comment and Response

One letter of comment was received on the preliminary 1990 specifications published November 7, 1989 (54 FR 46748). This comment is summarized and responded to as follows.

Comment: It is difficult to comment on proposed PSC allowances of crabs and halibut since they are a function of groundfish TACs and apportionments and certain bycatch assumptions. Since 1990 will be the first year in which comprehensive observer data will be available for the DAP fishery, the bycatch assumptions may prove to be inaccurate. There should be adequate provision for reapportioning PSC allowances during the fishing year so that groundfish harvests can be maximized within the prescribed PSC limits. As for groundfish PSC limits in JVP fisheries, species TACs should be set so as to fully exploit those species which are totally harvested by DAP fishermen. Hence, the TAC of a wholly-DAP species should not be reduced to accommodate the bycatch requirements of JVP fishermen. Specifically, the TAC for pollock should not be reduced to provide for a pollock bycatch in a JVP fishery for cod or yellowfin sole because 1990 will be the first year in which the DAP fishery will be able to harvest all of the pollock TAC. Finally, the pollock TAC should be set equal to the ABC for pollock because the best available scientific evidence indicates that the pollock biomass is currently above the level that will produce maximum sustainable yield and it is expected to decline due to natural causes. In addition, 150,000 mt should be added to the Bering Sea subarea pollock TAC to harvest the recently discovered "Bogoslof" stock which is not accounted for in the Bering Sea subarea estimate of ABC.

Response: New information developed between the annual drafting of the notice of preliminary initial specifications in September and the annual December Council meeting at which final recommendations to the Secretary are made is the basis for changes in PSC allowances of crabs and halibut from the preliminary to the final specifications notices. Such new information affecting final PSC allowances includes refined ABC estimates from data that were unavailable in September and data from the annual NMFS November survey of DAP performance expectations in the coming year. This annual process is designed in part to accommodate the development of new information from scientists, managers, and the public. However, tentative decisions, as in the notice of preliminary specifications, must be based on the best available information even if that information is likely to change.

Likewise, NOAA must use the best available information in establishing PSC allowances under Amendment 12A to the FMP. New information indicating that earlier assumptions, such as those used in the bycatch prediction model, are inaccurate may lead to incorrectly specified PSC allowances. In this event, the Secretary may reapportion PSC allowances under the inseason adjustment authority of the Amendment 12A implementing regulations (§ 675.20(e)(4)).

The final TAC specifications listed in Table 1 of this notice do not reduce the TAC of any species to accommodate JVP bycatch requirements. The proposed specification of groundfish PSC limits for JVP are now unnecessary because the initial amounts of groundfish available for JVP fishing in 1990 have been determined to be less than the Council or the Secretary originally perceived. In addition, the Secretary has determined that initial JVP bycatch requirements can be satisfied through reapportionments from the reserve

without imposing constraints on DAP fisheries.

Neither the Council nor the Secretary agree that the pollock TAC should be specified as equal to its ABC. Notwithstanding any biological conservation argument to the contrary, to do so under the OY limit of 2,000,000 mt would leave only 550,000 mt of all other species. In addition, the AP, Plan Team and the Council expressed concern for the apparent diminishing numbers of the northern (Steller) sea lion for which pollock is a known food source. Without suggesting a causal relationship between Steller sea lions and pollock harvests, the Secretary views a reduced pollock TAC as appropriately cautious. NOAA is aware of the incongruence between the management areas of the Bering Sea and the scientific survey areas which lead to exclusion of "Bogoslof" area pollock from the Bering Sea subarea TAC. NOAA understands that an amendment to the FMP has been proposed to address this issue.

Classification

This action is authorized under 50 CFR 611.93(b) and 675.20 and complies with Executive Order 12291. The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment on the reapportionment part of this notice. As immediate effectiveness of this action is necessary to benefit fishermen who would otherwise forego harvestable amounts of groundfish, the 30-day delayed effectiveness provision is also waived. However, interested persons are invited to submit comments in writing on the reapportionment to the above address.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations.

50 CFR Part 675

Fisheries.

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

Dated: January 9, 1990.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

TABLE 1.—FINAL 1990 TOTAL ALLOWABLE CATCH (TAC) AND APPORTIONMENTS OF GROUNDFISH IN THE BERING SEA (BS) AND ALEUTIAN ISLANDS (AI) AREA [1]

Species	TAC	Initial TAC [2]	DAP [3]	JVP [4]	DAH [5]	TALFF [6]
Pollock:						
AI	1,280,000	1,088,000	1,088,000	0	1,088,000	0
BS	100,000	85,000	85,000	0	85,000	0
Pacific cod	227,000	192,950	192,950	0	192,950	0
Sablefish:						
BS	2,700	2,295	2,295	0	2,295	0
AI	4,500	3,825	3,825	0	3,825	0
Atka mackerel	21,000	17,850	17,850	0	17,850	0
Yellowfin sole	207,650	176,502	12,750	163,752	176,502	0
Rock sole	60,000	51,000	51,000	0	51,000	0
Greenland turbot	7,000	5,950	5,950	0	5,950	0
Arrowtooth flounder	10,000	8,500	8,500	0	8,500	0
Other	60,150	51,128	10,200	40,928	60,150	0
Pacific Ocean perch:						
BS	6,300	5,355	5,355	0	5,355	0
AI	6,600	5,610	5,610	0	5,610	0
Other rockfish:						
BS	500	425	425	0	425	0
AI	1,100	935	935	0	935	0
Squid	500	425	425	0	425	0
Other species	5,000	4,250	4,250	0	4,250	0
Totals	2,000,000	1,700,000	1,495,320	204,680	1,700,000	0

[1] Amounts in metric tons; apply to entire BSAI area unless otherwise specified.
[2] Initial TAC (ITAC) = 0.85 of TAC; initial reserve = TAC − ITAC = 300,000.
[3] DAP = domestic annual processing.
[4] JVP = joint venture processing.
[5] DAH = DAP + JVP.
[6] TALFF = total allowable level of foreign fishing.

TABLE 2.—PRELIMINARY 1990 PROHIBITED SPECIES CATCH ALLOWANCES

Fisheries	Zone 1	Zone 2	Zones 1+2H Primary	BSAI-wide secondary
Red king crab, animals				
DAP flatfish fisheries	138,600			
DAP other fisheries	11,400			
JVP flatfish fisheries	50,000			
JVP other fisheries	0			
C. bairdi Tanner crab, animals				
DAP flatfish fisheries	339,600	110,000		
DAP other fisheries	260,400	1,890,000		
JVP flatfish fisheries	400,000	1,000,000		
JVP other fisheries	0	0		
Pacific halibut, metric tons				
DAP flatfish fisheries			467	567
DAP other fisheries			3,273	3,966
JVP flatfish fisheries			660	800

TABLE 2.—PRELIMINARY 1990 PROHIBITED SPECIES CATCH ALLOWANCES—Continued

Fisheries	Zone 1	Zone 2	Zones 1+2H Primary	BSAI-wide secondary
JVP other fisheries	0		0	0

TABLE 3.—REAPPORTIONMENT OF RESERVE: REVISED 1990 TOTAL ALLOWABLE CATCH (TAC) AND APPORTIONMENTS OF GROUNDFISH IN THE BERING SEA (BS) AND ALEUTIAN ISLANDS (AI) AREA [1]

Species	TAC	Initial TAC [2]	DAP [3]	JVP [4]	DAH [5]	TALFF [6]
Pollock:						
BS	1,280,000	1,088,000	1,088,000	0	1,088,000	0
Change: Add	0	0	0	22,451	22,451	0
Revised	1,280,000	1,088,000	1,088,000	22,451	1,110,451	0
AI	100,000	85,000	85,000	0	85,000	0
Pacific cod	227,000	192,950	192,950	0	192,950	0
Change: Add	0	0	0	7,025	7,025	0
Revised	227,000	192,950	192,950	7,025	199,975	0
Sablefish:						
BS	2,700	2,295	2,295	0	2,295	0
AI	4,500	3,825	3,825	0	3,825	0
Atka mackerel	21,000	17,850	17,850	0	17,850	0
Yellowfin sole	207,650	176,502	12,750	163,752	176,502	0
Rock sole	60,000	51,000	51,000	0	51,000	0
Change: Add	0	0	0	16,359	16,359	0
Revised	60,000	51,000	51,000	16,359	67,359	0
Greenland turbot	7,000	5,950	5,950	0	5,950	0
Arrowtooth flounder	10,000	8,500	8,500	0	8,500	0
Change: Add	0	0	0	33	33	0
Revised	10,000	8,500	8,500	33	8,533	0
Other flatfish	60,150	51,128	10,200	40,928	60,150	0
Pacific Ocean perch:						
BS	6,300	5,355	5,355	0	5,355	0
AI	6,600	5,610	5,610	0	5,610	0
Other rockfish:						
BS	500	425	425	0	425	0
AI	1,100	935	935	0	935	0
Squid	500	425	425	0	425	0
Other species	5,000	4,250	4,250	0	4,250	0
Change: Add	0	0	0	1,834	1,834	0
Revised	5,000	4,250	4,250	1,834	6,084	0
Totals	2,000,000	1,700,000	1,495,320	204,680	1,700,000	0
Change: Add [7]	0	0	0	47,702	47,702	0
Revised	2,000,000	1,700,000	1,495,320	252,382	1,747,702	0

[1] Amounts in metric tons; apply to entire BSAI area unless otherwise specified.
[2] Initial TAC (ITAC) = 0.85 of TAC; initial reserve = TAC — ITAC = 300,000.
[3] DAP = domestic annual processing.
[4] JVP = joint venture processing.
[5] DAH = DAP + JVP.
[6] TALFF = total allowable level of foreign fishing.
[7] The total increase in JVP and DAH is subtracted from the reserve. Hence, the remaining reserve is 300,000—47,702=252,298.

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Proposed Rules

Federal Register
Vol. 55, No. 10
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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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

RIN 3150-AC65

Basic Quality Assurance Program, Records and Reports of Misadministrations or Events Relating to the Medical Use of Byproduct Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The NRC is proposing amendments to 10 CFR part 35 that would require medical use licensees to establish and implement a basic quality assurance (QA) program. The objective of the basic QA program is to provide high confidence that errors in the medical use of byproduct material will be prevented. The proposed amendments would enhance patient safety while allowing the flexibility necessary for proper medical care. The NRC is also proposing certain modifications to the definition of "misadministration" and to the related reporting and recordkeeping requirements.

DATE: Comments must be received by April 12, 1990. Comments received after this date will be considered if it is practicable to do so, but assurance of consideration cannot be given except for the comments received by this date.

ADDRESSES: Submit written comments and suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Copies of the draft regulatory analysis and the comments received on this proposed rule may be examined at the Commission's Public Document Room at 2120 L Street NW., Lower Level, Washington, DC. Single copies of the draft regulatory analysis are available from Dr. Anthony N. Tse, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Dr. Tse, see ADDRESSES heading, telephone: (301) 492-3797.

SUPPLEMENTARY INFORMATION:

I. Byproduct Material in Medicine

Medical Use[1]

Radioactive materials are used in drugs in the field of nuclear medicine. Drugs labeled with radioisotopes are known as radiopharmaceuticals. In diagnostic nuclear medicine, patients receive these materials by injection, inhalation, or oral administration. Physicians use radiation detection equipment to visualize the distribution of a radioactive drug within the patient. Using this technology, it is possible to locate tumors, assess organ function, or monitor the effectiveness of a treatment. An estimated 7 million diagnostic nuclear medicine procedures are performed in this country annually. In therapeutic nuclear medicine, larger quantities of radiopharmaceuticals are administered to treat various medical conditions (e.g., hyperactive thyroids). An estimated 30,000 therapeutic procedures are performed each year.

Sealed sources that produce high radiation fields are used in radiation therapy primarily to treat cancer. A radioactive source in a teletherapy machine can be adjusted to direct a radiation beam to the part of the patient's body in need of treatment. An estimated 100,000 patients receive cobalt-60 teletherapy treatments each year. Smaller sealed sources with less radioactivity are designed to be implanted directly into a tumor area or applied on the surface of an area to be treated. This procedure is known as brachytherapy. About 50,000 brachytherapy treatments are performed each year.

Sealed sources can also be used in machines that are used for diagnostic purposes. The source provides a beam of radiation that is projected through the patient. A device on the other side of the patient detects the amount or spatial distribution of radiation that goes through the patient. This can provide information about tissues within the patient. This is a relatively new development in the field of medicine and the NRC has no estimate of the number of these diagnostic procedures performed annually.

State and Federal Regulation

Medical use is regulated through State or Federal regulations. Twenty-nine States, known as Agreement States, have been delegated the authority by agreement with the NRC to regulate the use of byproduct material, including medical use (this type of agreement is authorized by Section 274 of the Atomic Energy Act). These States issue licenses for medical use and currently regulate about 5,000 licensees.

The NRC regulates medical use in twenty-one States, the District of Columbia, the Commonwealth of Puerto Rico, and various territories of the United States and has licensed 2,200 medical institutions and 300 physicians in private practice.

II. NRC's Regulatory Program

NRC's Policy Regarding Medical Use

In a policy statement published February 9, 1979 (44 FR 8242), the NRC stated:

1. The NRC will continue to regulate the medical uses of radioisotopes as necessary to provide for the radiation safety of workers and the general public

2. The NRC will regulate the radiation safety of patients where justified by the risk to patients and where voluntary standards, or compliance with these standards, are inadequate.

3. The NRC will minimize intrusion into medical judgments affecting patients and into other areas traditionally considered to be a part of the practice of medicine.

The NRC has the authority to regulate medical use to protect the health and safety of patients, but also recognizes that physicians have the primary responsibility for the protection of their patients. NRC regulations are predicated on the assumption that properly trained and adequately informed physicians will make decisions in the best interest of their patients.

[1] "Medical use," as currently defined in 10 CFR 35.2, means "the intentional internal or external administration of byproduct material, or the radiation therefrom, the human beings in the practice of medicine in accordance with a license issued by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico." Whenever this term is used in this rulemaking, this definition applies.

NRC's Responsibilities in Medical Use

The NRC draws a line between the unavoidable risks attendant to purposefully prescribed and properly performed clinical procedures and the unacceptable risks of improper or careless medical use. The NRC is obliged, as part of its public health and safety charge, to establish and enforce regulations that protect the public from the latter.

Reports of Therapy Misadministrations and Diagnostic Misadministrations That Resulted in Doses in the Therapy Range

The NRC has reviewed 65 therapy misadministration reports over the period November 1980 through December 1988. The following analysis of these events provides the basis for determining that a potential benefit can result from this rulemaking. The specific causes of these therapy misadministrations, listed in Table 1, are related to the specific treatment modality. Nonetheless, there are three common problems related to all of these misadministrations: inadequate training, inattention to detail, and lack of redundancy.

Table 1—Therapy Misadministrations Reported to NRC from November 1980 Through December 1988

A. Teletherapy

Prescription

- Total daily dose was delivered from each port. (2 events)
- Oral and written prescriptions were different. (1 event)
- Boost dose of 500 rad/3 day was interpreted as 500 rad per day on each of 3 days, rather than 166 rad per day. (1 event)
- Proper body side was not clearly indicated. (1 event)

Treatment Planning

- Tumor depth was incorrectly measured. (1 event)
- Tumor depth was incorrectly recorded. (1 event)
- Dosimetrist used wrong computer program. (1 event)
- Dosimetry tables for wrong unit were used. (2 events)
- Error was made in dose calculations. (11 events)
- Incorrect formula used in computer program—21 patients affected. (1 event)

Records

- Arithmetic mistakes were made. (1 event)
- Poor handwriting of numerals caused misunderstanding. (1 event)
- Dose calculation result was transcribed incorrectly. (2 events)
- Error was made in a patient's chart and the chart was not checked (1 event)

Physical measurements

- Wedge factors were measured incorrectly—53 patients affected. (1 event)

Application

- Field blocks were prescribed but not used. (1 event)
- Incorrect area was treated. (2 events)
- Patient was improperly identified. (1 event)
- Rotation switch on the machine was set incorrectly. (1 event)
- Co-60 machine was used instead of a linear accelerator. (1 event)
- Treatment time was misread. (1 event)
- Patient set up was not in accordance with the treatment plan. (1 event)

B. Brachytherapy

Treatment Planning

- Dose rate was much higher than first estimated. (1 event)
- Error was made in dose calculation. (3 events)

Application

- Sources with wrong activities were loaded in applicator. (6 events)
- Source fell out of applicator. (2 events)
- Source was improperly seated in applicator. (2 events)
- Incorrect areas were treated. (1 event)
- Incorrect number of sources were loaded. (1 event)
- Leaking sources were discovered. (2 events)

C. Radiopharmaceutical Therapy

- Wrong radiopharmaceutical was administered. (3 events)
- Dosage was not assayed. (4 events)
- Patient was improperly identified. (1 event)
- Range switch for dose calibrator was set incorrectly. (1 event)
- The dosage of the radiopharmaceutical sent by the supplier was higher than the dosage ordered. (1 event)
- The dosage was improperly calculated. (1 event)

From November 1980 through December 1988, the NRC received 23 reports on diagnostic misadministrations involving I–131 that led to doses in the therapy range. In these misadministrations, patients were mistakenly administered 1 to 20 millicuries of iodine-131 with a resulting thyroid dose of about 1,000 to 20,000 rads. Many of the misadministrations demonstrated that the authorized user failed to review the medical history of the referred patient to determine the suitability of a particular clinical procedure. In many misadministrations, the referring physician, who is not a nuclear medicine expert, and the nuclear medicine technologist, who is not a medical expert, determine which radiopharmaceutical should be administered. Furthermore, in some misadministrations, technologists unfamiliar with the clinical procedure prescribed by the authorized user mistakenly administered a dosage that was not intended. It is apparent, therefore, that whenever radiopharmaceuticals capable of producing therapy doses are used, clear nomenclature, independent verification, and adequate training are essential.

Improved training of medical personnel who handle and administer byproduct material can reduce the potential for error. Training should clearly impress on each individual involved in medical use that clear communication of the prescribed medical use and the implementation of systematic checks to detect and prevent errors early in the process are essential for the delivery of quality care. All information integral to the diagnostic or therapeutic medical use, whether specific to the patient or to the clinic, should be carefully reviewed for clarity, applicability, and correctness. Each individual involved in the process should be instructed to ask for clarification if there are any unclear or nonroutine procedures or instructions.

Inattention to detail is often a significant factor in misadministrations. The NRC recognizes that this problem is not limited to medical use. Computerized radiation therapy treatment planning may reduce the number of mistakes in sealed source treatments, and "record and verify" systems that check teletherapy unit orientations and settings may reduce the number of mistakes in teletherapy administration. But even these systems must ultimately rely on quantities that are initially measured, recorded, and entered by workers.

Lack of redundancy means that there is no independent mechanism for detecting errors. Independent verification requires examination by a second individual of each datum entry, whether a physical measurement or a number copied from a table of values, as well as a check of arithmetic operations for correctness. Redundancy requires that two separate systems produce the same result. For purposes of planning radiation therapy, the best method for the early detection of mistakes may be a simple independent check. Independent verification may also need to be incorporated into procedures for measuring values of radiation parameters, treatment planning, and administering radiation to patients. In radiation therapy, for example, an independent auditor can detect mistakes in both process design and process application as well as recommend where a change in the process might reduce the chance of a future error.

These observations have led the NRC to some general conclusions regarding quality assurance. All medical use should be planned with the realization that individuals may make mistakes. Some simple aids may include using

tables and graphs that are clearly titled and easy to read, and using a written prescription. NRC inspections have revealed that about ten percent of teletherapy unit calibrations and periodic spot checks are incomplete. Checklists could be used to assure completeness.

Independent verification could be made an integral part of the design of the treatment process to detect errors. Some examples are: all entries and calculations in a treatment plan could be checked by an individual who did not develop the treatment plan; each patient's chart could be reviewed weekly to check for accumulated dose and implementation of prescription changes; and the teletherapy unit output could be checked periodically. Furthermore, the complete teletherapy process, including physical measurements, could be examined in detail occasionally by an expert in order to identify systematic mistakes and make system improvements.

A QA program that requires a physical measurement of the dose or amount of radioactivity actually administered to the individual patient would provide assurance that the administered dose is the same as the prescribed dose. Such measurements are currently required (10 CFR 35.53) for radiopharmaceutical therapy, using photon emitting radionuclides, and occasionally are done for some teletherapy cases, but because of expense or the unavailability of equipment, these measurements are not commonplace in sealed source therapy.

Voluntary Initiatives

The NRC is aware of voluntary initiatives to improve quality assurance. A notable example is the "Patterns of Care" study managed by the American College of Radiology. In addition to comparing prescriptions and survival rates for certain diseases at various therapy facilities across the nation, methods of calculating and measuring applied dose rates are examined for accuracy. Such an examination can detect whatever procedural flaws may be present as well as determine the precision and accuracy of day-to-day service. Furthermore, the American College of Radiology is currently developing a comprehensive Quality Assurance Program for volunatary use in radiation oncology.

The NRC encourages initiatives by the industry to develop consensus standards and will consider endorsement of them in its regulatory guidance at an appropriate time. However, because of the lack of enforceability, voluntary programs alone are not considered to be an adequate vehicle to ensure that the NRC objective of reducing unnecessary exposure from byproduct material will be met. Consequently, the NRC is considering this rulemaking.

Earlier NRC Efforts

This is not the first time the NRC has examined the matter of QA in medical use. In 1979 the NRC issued some QA requirements for teletherapy (see 44 FR 1722, published January 8, 1979). This rulemaking was precipitated by errors committed by a teletherapy licensee which ultimately affected a very large number of patients. The output of a teletherapy unit was incorrectly calculated and the licensee made no physical measurements to determine whether the calculation was correct. These errors resulted in cobalt-60 teletherapy being incorrectly administered to 400 patients. The 1979 rule addressed the circumstances surrounding that event but did not critically examine the entire radiation therapy process.

III. Proposed Rule on Basic QA Published in 1987

On October 2, 1987, the NRC published a proposed rule (52 FR 36942) that would require its medical use licensees to implement some specific basic QA practices to reduce the number of misadministrations involving the use of byproduct material in radiation therapy and the use of radioactive iodine in diagnostic procedures. This proposed rulemaking was based on an analysis of misadministrations reported to the NRC by its medical use licensees concerning errors in administering byproduct material. The result of the analysis indicated that most of the events originated in mistakes made by individuals. Public comments received on the proposed rule indicated that, although these proposed QA practices might reduce the number of such errors, the imposition of the prescriptive directions given in the 1987 proposed rule might interfere with the practice of medicine because the proposed rule did not afford sufficient flexibility for clinical practice.

In a public meeting held on January 26, 1988, members of the Advisory Committee on the Medical Uses of Isotopes (ACMUI), an advisory body established for advising the NRC staff, also suggested that the 1987 proposed rule did not provide sufficient flexibility for clinical practice.

On April 7, 1988, members of the medical community, including several members of the ACMUI, briefed the Commission on their concerns regarding the 1987 proposed rule. They stated that a performance-based rule should be promulgated, rather than a prescriptive rule. They also suggested that a pilot program would be useful for determining whether the proposed QA steps would interfere with clinical practice. Furthermore, they stated that, under the existing NRC regulation, the definition of the term "misadministration" is unclear and that the related reporting requirements are confusing.

Subsequently, the NRC decided to develop a performance-based rule and a regulatory guide and, as a part of the same rulemaking, to review the term "misadministration" its scope and related reporting requirements. In addition, the NRC also decided to conduct a pilot program to determine the impact, and efficiency of the proposed basic QA program and procedures developed by licensees based on the draft regulatory guide.

On November 7, 1988, the NRC held a public meeting of the QA Subcommittee of the ACMUI to assist in the development of a proposed performance-based rule, regulatory guide, and pilot program. On January 30 and 31, 1989, the NRC staff held a public workshop to discuss drafts of a revised basic QA rule and a regulatory guide. Medical use licensees' personnel representing different disciplines (e.g., physicians, physicists, and technologists) were invited to participate in a round table discussion with the NRC staff. On March 3, 1989 the NRC staff also met with the American College of Radiology (ACR) to discuss the NRC's draft regulatory guide and the ACR's draft QA program. The ACR's draft QA program is a comprehensive model QA program that is designed to be readily adopted, in whole or in part, by ACR members.

The NRC staff has used the information provided in these meetings in developing the performance-based QA requirements and new reporting and recordkeeping requirements. These actions are combined in a single proposed rule that is being published for public comment. A draft regulatory guide containing general guidance for licensees to develop a QA program that would be acceptable to the NRC staff for meeting the performance-based QA rule is also being published for public comment.

The proposed amendment for a basic QA program is designed to complement other QA requirements contained throughout 10 CFR part 35. Examples of the existing QA requirements include: 10 CFR 35.50, "Possession, Use, Calibration, and Check of Dose

Calibrators"; 10 CFR 35.51, "Calibration and Check of Survey Instruments"; 10 CFR 35.632, "Full Calibration Measurements"; and 10 CFR 35.634, "Periodic Spot-Checks."

IV. Discussion of Proposed Regulatory Text

Section 35.2 Definitions

The NRC is proposing to clarify the term "misadministration" and to add the following terms: "basic quality assurance," "clinical procedures manual," "diagnostic event," "diagnostic referral," "prescribed dosage," "prescribed dose, "prescription," and "therapy event."

The NRC is proposing to modify the definition of "misadministration" in the regulations by defining "misadministration" as those occurrences specified in proposed §§ 35.33(b) or 35.34(b). The Commission believes that a misadministration is indicative of inadequate quality assurance on the part of the licensee, and as such, additional regulatory attention, including special inspections, additional analysis and evaluation, or other NRC action, may be appropriate. All of the diagnostic or therapy occurrences currently defined as misadministrations are retained in the proposed amendment except a separate reporting threshold has been established for brachytherapy. Misadministrations will be specified under separate sections relating to either diagnostic or therapy medical use. In addition, an error in teletherapy fractional dose and medical use involving the wrong target organ or site will specifically be listed as misadministrations.

The proposed amendment also adds the terms "diagnostic event" and "therapy event" to include the events specified in proposed §§ 35.33(a) or 35.34(a) for which a record or report is required. These events essentially involve, for example, deviations from the procedures in the licensee's basic QA program. The proposed amendment thus distinguishes between misadministrations, which involve certain errors in the administration of byproduct material (or the radiation therefrom), and other events that essentially involve deviations from procedures in the administration of the byproduct material.

The other six terms, "basic quality assurance," "clinical procedures manual," "diagnostic referral," "prescribed dosage," "prescribed dose," and "prescription," are proposed to clarify the regulatory requirements.

The Commission would especially appreciate public comment on the proper use of the term "misadministration." Should the term misadministration be reserved for the most serious events that would include overexposures resulting in death, serious injury, or occurrences resulting in receipt of substantially more than the prescribed dose (i.e., perhaps double the prescribed dose for a therapy procedure, or a dose in the therapy range for a diagnostic procedure)? How should "events" be distinguished from misadministrations"? Should the division of occurrences into "events" or "misadministrations" be done differently from those proposed in §§ 35.33 and 35.34?

Section 35.33 Records and Reports of Diagnostic Events or Misadministrations

The NRC is proposing to replace the existing 10 CFR 35.33, "Records and reports of misadministrations," with two sections: one for diagnostic events or misadministrations and the other for therapy events or misadministrations (§§ 35.33 and 35.34, respectively). Thus, depending on whether a diagnostic or therapy medical use is involved, licensees would be able to refer to one section of the regulations in order to determine whether an error in medical use constitutes a misadministration, a diagnostic event, or a therapy event, and to determine the related recordkeeping and reporting requirements. In the existing regulations, it is necessary to refer to one section (10 CFR 35.2) to determine what constitutes a misadministration and to another section (10 CFR 35.33) for the applicable recordkeeping and reporting requirements.

Paragraphs 35.33(a) and (b) set forth the types of diagnostic events or misadministrations, respectively, for which a record and, under certain circumstances, a report would be required, pursuant to §§ 35.33(c) and (d). The types of diagnostic misadministrations in proposed § 35.33(b) are essentially the same as the diagnostic misadministrations currently specified in the definition of "misadministration" in existing 10 CFR 35.2. In proposed § 35.33(a) three diagnostic events would be added. The first additional event, set forth in § 35.33(a)(1), is designed to identify any diagnostic medical use not authorized in the license. The other two additional events are designed to identify medical use without a prescription or a diagnostic referral [2] (in § 35.33(a)(2)) or without properly recording the radiation dose or radio-pharmaceutical dosage administered (in § 35.33(a)(3)). The NRC believes that prior to diagnostic administrations not involving I–125 or I–131, there must be a prescription or a diagnostic referral except under emergent situations; prior to diagnostic administration involving I–125 or I–131, there must always be a prescription. The prescription or the diagnostic referral is needed to communicate the instructions from the prescribing physicians to the individual administering the dose or dosage. Also, after the administration, a record must be made to indicate the administered dose or dosage. If these records are not properly completed, § 35.33(c) requires that the Radiation Safety Officer promptly investigate the cause so that actions can be taken to correct the deficiency in the QA program.

Paragraphs 35.33(c) through (e) specify the actions that a licensee would be required to take after the discovery of a diagnostic event or misadministration. Paragraph 35.33(c) requires an investigation by the Radiation Safety Officer. Paragraph 35.33(d) specifies the circumstances under which reporting of diagnostic events or misadministrations would be necessary. Paragraph 35.33(e) specifies the recordkeeping requirements. Although the requirements in these paragraphs are essentially the same as the requirements in the existing 10 CFR 35.33(c) and (d), there are certain changes, as discussed below. Paragraph 35.33(f) remains unchanged.

In proposed § 35.33(d), a requirement is added for the licensee to notify the patient if the diagnostic event or misadministration has the potential to cause serious harm to the patient. This change is being made to make proposed § 35.33(d) consistent with the patient notification provisions in the current regulations in 10 CFR 35.33(a) and proposed § 35.34(d). The NRC believes that if a diagnostic event or misadministration is serious enough to lead to a dose in the therapy range, then notice to the patient is also warranted, unless circumstances make notifying the patient inappropriate. Another change in § 35.33(d) is that provisions have been added describing the information that should be set forth in the written report, comparable to existing 10 CFR 35.33(b) and proposed § 35.34(e). A minor change is that the reference to NRC-Form 473 in existing 10 CFR 35.33(c) has been deleted from proposed § 35.33(d) since that form will probably be either superseded or updated to be consistent with the other modifications in the rule.

[2] The terms "prescription" and "diagnostic referral" are defined in the proposed § 35.2.

In proposed § 35.33(e), provisions have been added requiring that the licensee retain, in an auditable form, records of prescriptions, diagnostic referrals, and diagnostic clinical procedures for three years. These records may be part of medical records currently kept by the medical use licensees. These records are necessary to facilitate the inspection process.

Section 35.34 Records, Reports, and Notifications of Therapy Events or Misadministrations

The NRC is proposing to add § 35.34 that specifies reporting and recordkeeping requirements for therapy events or misadministration. Paragraph 35.34(a) lists five proposed therapy events for which records and a report to the licensee management would be required, and under certain circumstances, a telephone notification and a written report to the NRC would also be required. Paragraph 35.34(b) lists therapy misadministrations for which notification of licensee management and a telephone notification and written report to the NRC would always be required. The therapy misadministrations listed in § 35.34(b) include the types of therapy misadministrations currently specified under the definition of "misadministration" in existing 10 CFR 35.2, as well as misadministrations related to teletherapy fractional doses and to brachytherapy.

Three therapy events (§§ 35.34(a)(1), (a)(2), and (a)(4)) are similar to those previously discussed under proposed § 35.33 but apply to therapeutic, rather than diagnostic, medical use. Paragraph 35.34(a)(1) provides that a therapy event includes a therapeutic medical use in which there was not both a prescription and a prior review of the patient's case by an authorized user or a physician under the supervision of an authorized user. Because a large radiation dose is involved in therapy cases, the NRC believes that both a prescription and a prior review of each patient's case are necessary before the byproduct material is administered.

An additional therapy event (§§ 35.34(a)(3)) is related to teletherapy fractional doses and is intended to alert the Radiation Safety Officer and the licensee management of minor deviations from procedures in the basic QA program so that actions can be taken to correct deficiencies in the QA program.

The first two therapy misadministrations (§§ 35.34(b)(1) and (b)(2)) are the same types of misadministrations specified in existing 10 CFR 35.2. The following therapy misadministrations (§§ 35.34(b)(3) and (b)(5)) are intended to clarify existing 10 CFR 35.2, Paragraph (6), which states that the definition of a "misadministration" includes "a therapy radiation dose from a sealed source such that errors in the source calibration, time of exposure, and treatment geometry result in a calculated total treatment dose differing from the final prescribed total treatment dose by more than 10 percent." This definition imples that the total treatment dose applies to a combined dose for teletherapy treatment and brachytherapy treatment if both modalities were administered to the same patient. In the proposed amendment, teletherapy events and brachytherapy events are specified separately, and criteria for fractional doses for teletherapy treatment fractions are provided.

Furthermore, on its face, the language in the existing definition addresses only errors in total treatment dose and does not explicitly address errors in fractional doses that may have occurred during any one of many teletherapy teatment fractions. This definition causes confusion about whether certain events should be reported (e.g., if there is a significant error in a fractional dose but the administered total dose is still within 10 percent of the prescribed total dose).

The proposed modifications relating to a teletherapy event (§ 35.34(a)(3)) and a teletherapy misadministration (§ 35.34(b)(3)) are designed to identify any one of the following types of overdose or underdose therapy events: for any treatment fraction, the administered fractional dose differs from the prescribed franctional dose by more than 20 percent of the prescribed fractional doze (§ 35.34(a)(3)) but less than the percentage of fractional dose set forth in § 35.34(b)(3)(ii); the total administered dose differs from the total prescribed dose by more than 10 percent of the prescribed total dose (§ 35.34(b)(i)); for any treatment fraction, the administered fractional dose is greater than twice or less than one-half the prescribed fractional dose (§ 35.34(b)(3)(ii)); or for the fractions administered to date, the sum of the administered fractional doses differs from the sum of the prescribed fractional doses by more than 10 percent of the prescribed total dose, i.e., the prescribed dose for all fractions, not just for the franctions administered to date (§ 35.34(b)(3)(iii)).

It must be emphasized here that the purpose of §§ 35.34(a)(3) and (b)(3) is to identify therapy events in which the administered dose is significantly different from the prescribed dose as a result of errors made in the source calibration, the time of exposure, treatment geometry, or other errors. Neither the current requirement nor the proposed requirement are intended to preclude a prescribing physician from properly changing the prescription if, based on medical judgment, such changes would benefit the patient. For the purpose of the reporting requirement, such a change will make the most recent prescription the prescription of record that supersedes the original prescription. For example, a prescribing physician might prescribe a certain fractional dose for the first few treatment fractions and later, depending on the reaction of the patient, might make a new prescription for a different dose for the remaining fractions. However, assume that a physician prescribes a fractional dose of 200 rads, and the licensee discovers after the fifth fractional dose is given that, due to an error, the administered fractional dose was 250 rads for each of the five fractions. Because the error in dose exceeded 20 percent of the prescribed fractional dose, regardless of whether a new prescription is written by the authorized user for subsequent fractions, the Radiation Safety Officer would be required to investigate the cause of the error, make a record for NRC review, retain the record as directed in § 35.34(f), and notify licensee management to take corrective action.

The following examples illustrate the kind of therapy events that fall within the scope of §§ 35.34(a)(3), (b)(3)(ii), and (b)(3)(iii). The prescribed total dose for a patient is 5,000 rads to be given in 25 daily fractions of 200 rads per fraction. If, as a result of an error, the patient is given less than 160 rads or more than 240 rads (but less than the percentage of fractional dose set forth in § 35.34(b)(3)(ii)) for any one fraction, such an event would constitute a therapy event under proposed § 35.34(a)(3). Under proposed § 35.34(c), the Radiation Safety Officer would be required to investigate the event and to report such an event to licensee management, but not to the NRC, the referring physician, or the patient because subsequent fractional doses could be adjusted to compensate for the error.

Under § 35.34(b)(3)(ii), using the same example given above, if the administered dose for any fraction is more than 400 rads (greater than twice the prescribed fractional dose) or less than 100 rads (less than one half of the prescribed fractional dose), the licensee would be required to report to NRC and

others as required under proposed § 35.34(d).

Paragraph 35.34(b)(3)(iii) addresses a therapy misadministration involving cumulative errors in fractional doses for several treatment fractions. Using the same example given above, if 16 fractions have already been administered, and the administered dose for each fraction is found upon recheck to have been 240 rads instead of the prescribed fractional dose of 200 rads, the sum of the prescribed fractional doses is 3,200 rads and the sum of the administered fractional doses is 3,840 rads. The difference is 640 rads, which exceeds 500 rads (10 percent of the total prescribed dose). The event would constitute a therapy misadministration under § 35.34(b)(3)(iii) and would be reported to NRC, the referring physician, and the patient (after conferring with the referring physician). Continuing the same example, if for 6 fractions the individual administered doses varied about 200 rads, i.e., 210, 190, 205, 195, 215, and 185, the sum of the administered fractional doses would be 1,200 rads, which would equal the sum of the prescribed fractional doses. This would not be a therapy misadministration under § 35.34(b)(3)(iii). In fact, any combination of such small variations is not reportable if the criteria of §§ 35.34(a)(3) and (b)(3) are not exceeded.

With respect to brachytherapy, if a sealed source is leaking or lost during the patient's treatment, questions have arisen whether this constitutes a "misadministration" under existing 10 CFR 35.2. To clarify the reporting requirement, § 35.34(b)(4) is being proposed to make it explicit that the definition of a therapy administration includes all cases in which a source is leaking during treatment, regardless of the cause, or in which a source is lost during treatment, or mistakenly is not removed from the patient upon completion of the treatment. Of course, for purposes of this regulation, sealed sources that are permanently implanted are not considered to be "lost."

Also regarding brachytherapy, the intent of § 35.34(b)(5) is to identify significant mistakes that are made during treatment planning or execution so that these mistakes may be prevented in the future. The sealed sources for brachytherapy are implanted inside the tissue or placed in close contact with the tumor. The dose distribution changes significantly with even a few millimeters change in distance from the source. In many instances, the physician may not be able to determine the exact size and shape of the tumor until the patient is in the operating room. During the implant operation, the physician may not be able to implant the sealed sources at the precise location planned. Therefore, the NRC believes that a criterion of a 20 percent difference between the prescribed treatment parameters and the administered treatment parameters (rather than 10 pecent) is appropriate for brachytherapy. This proposed requirement is not intended to preclude a physician from properly updating the prescription after the implant to reflect the actual loading of the sealed sources or from properly changing the prescription if, based on the medical judgment of the physician, such changes would benefit the patient.

Paragraphs 35.34(c) through (e) specify the actions that a licensee would be required to take after the occurrence of a therapy event or misadministration. These paragraphs are comparable to proposed §§ 35.33(c) through (e) for diagnostic events or misadministrations. The requirements in these paragraphs are substantially the same as the requirements currently specified in existing 10 CFR 35.33(a), (b), and (d). In § 35.34(f), provisions have been added requiring that the licensee retain, in an auditable form, records of prescriptions for three years. These records may be part of medical records currently kept by the medical use licensees. Paragraph 35.34(g) is the same as the existing 10 CFR 35.33(e).

Proposed § 35.34(d) retains the requirement to notify the patient or the patient's responsible relative (or guardian) when a misadministration involving a therapy procedure occurs. The Commission continues to believe that patients have a right to know when they have been involved in a serious misadministration, unless this information would be harmful to them. See "Misadministration Reporting Requirements," 45 FR 31701, 31702 (May 14, 1980). This is an important requirement which is parallel to other NRC requirements that licensees report to an individual certain radiation exposure data pertaining to that individual. Furthermore, Federal legislation, such as the Privacy Act of 1974, recognizes the right of individuals to learn information about themselves which is contained in the records of institutions both inside and outside of the Federal sector. The NRC encourages the authorized user or a physician under the supervision of the authorized user, upon obtaining the patient's consent or before administering the radiopharmaceutical or radiation, to advise the patient or the patient's responsible relative (or guardian) that a record of the treatment will be available if requested.

During the QA Subcommittee meeting held on November 7, 1988, an attendee from the medical community questioned the appropriateness of the dose criterion, which is based on a percentage of the prescribed total dose, for determininig whether a therapy event must be reported to the NRC. As an alternative, the attendee suggested the use of a radiation tolerance dose for each specific organ as a criterion for determining whether an event must be reported. The attendee stated that since the tolerance dose is selected as the dose that might cause damage to an organ not in the treatment volume, any dose in excess of the tolerance dose should be reported.

The NRC staff has considered this comment. However, a criterion based on a percentage of the prescribed total dose has been retained for the following reasons:

(1) The NRC's purpose in requiring reporting errors in medical use is to identify their causes in order to correct them and prevent their recurrence. The NRC can expedite this by notifying other licensees if there is a possibility that they could make the same errors. Reporting is designed to identify events that could have generic significance for medical use licensees and to indicate whether a licensee has QA problems. The types of events that must be reported may indicate a breakdown in the licensee's QA program. Although a difference of 10 percent or more between the administered total dose and the prescribed total dose for teletherapy may not necessarily indicate harm to the patient, it exceeds the normal uncertainties of the treatment planning and delivery system. If the cause of the event is not determined and corrected, similar errors may occur in the future that could harm patients. Because the uncertainties in most teletherapy administrations are 2 to 3 percent, the staff believes the criterion of a 10 percent difference would avoid identifying events that are part of the normal uncertainties of the treatment planning and delivery system.

(2) The tolerance dose system may be unwieldy. If this approach were adopted, a table of the ranges of acceptable doses for each organ would need to be published. However, there would be many exceptions to the published dose ranges for a variety of reasons. The amount of tolerance to radiation depends on the specific organ, the dose rate, fractionation schedule, the volume exposed, oxygen supply within

the organ, heterogeneity of dose, the patient's age, adjuvant therapy, genetic makeup, and other medical conditions. When all these factors are taken into account, there is still a large uncertainty in what is currently known about individual organ tolerances. In some cases, based on a physician's medical judgment, exceeding the accepted tolerance dose to normal tissues or organs not in the treatment volume may be appropriate if the need exists to provide definitive treatment to a cancer that threatens the patient's life, that causes unendurable pain, or that causes unacceptable loss of normal life capacities.

In summary, the NRC believes that the proposed modifications in reporting and recordkeeping requirements would continue to address the purpose of the current regulations and to provide the NRC with information that may be used to assess the effectiveness of the licensee's basic QA program.

Section 35.35 Basic Quality Assurance Program

In 1987, the NRC published for public comment a proposed amendment to 10 CFR part 35 (52 FR 36942, October 2, 1987). The proposed amendment prescribed certain QA procedures that the NRC believed should be incorporated into each licensee's medical program to prevent the most common errors in medical use involving therapy and iodine. These QA procedures were based on a review of QA publications and case reports of the incidents. Many commenters stated that certain requirements in the 1987 proposed amendment might be disruptive, uneconomical, or difficult to comply with because of factors such as patient compliance, available staff, or medical care considerations. They recommended that, instead of prescriptive requirements, a performance-based amendment should be promulgated and that the details of the basic QA procedures should be left to the licensees.

The NRC has adopted this recommendation in this proposed amendment. The NRC would require that a medical use licensee establish a written basic QA program to prevent, detect, and correct the cause of errors in medical use.

A draft regulatory guide has also been prepared by the NRC staff. The regulatory guide provides guidance for licensees to develop a basic QA program that would be acceptable to the NRC staff for meeting the performance-based amendment (the proposed § 35.35). Many licensees may also have implemented a basic QA program that would substantially meet the requirements of proposed § 35.35. Medical use licensees will be expected to use the guidance in the regulatory guide as they develop a program specific for their clinical situation. However, a licensee may propose a basic QA program based on other source of guidance; the NRC staff would review these proposed QA programs on a case-by-case basis.

Under the 1987 proposed rulemaking, specific QA procedures would have been applied only to radiation therapy and to diagnostic procedures involving radioactive iodine. However, under this broad performance-based amendment, the QA program will cover all diagnostic and therapeutic procedures because a licensee has the responsibility to administer the prescribed dose or dosage to the correct patient in the manner prescribed. The NRC recognizes that implementation of a basic QA program is more likely to have the desired effect if it establishes a consistent performance requirement for the organization and all personnel involved in the medical use. NRC would appreciate comment on whether exemptions to the proposed QA requirements should be granted to medical use licensees who only perform diagnostic procedures and do not possess I–125 or I–131.

V. Enforcement

In addition to amending the regulations to require medical use licensees to establish a written basic QA program covering both diagnostic and therapeutic procedures and clarifying, modifying, and strengthening the misadministration reporting requirements, the Commission intends to modify the NRC Enforcement Policy in 10 CFR part 2 in conjunction with the final rulemaking. The Commission views the occurrence of misadministrations and other reportable events as evidence of inadequate quality assurance in the medical use of byproduct material and may subject the licensee to enforcement action. The enforcement policy will be modified by amending current examples dealing with misadministrations and adding specific examples of violations of the Commission's QA requirements to Supplement VI of Appendix C to 10 CFR part 2.

Such examples would include: At Severity Level I, failure to follow procedures in a QA program that results in a death or serious injury to a patient; at Severity Level II, failure to follow procedures in a QA program that results in substantial overexposure to the patient; at Severity Level III, failure to establish a written QA program, failure to conduct adequate audits of a QA program or take prompt corrective actions for deficiencies identified through such audits, failure to follow procedures of a QA program that results in therapy misadministrations, failure to follow QA program procedures that results in a number of diagnostic misadministrations over the inspection period, or a recurrent violation from the previous inspection period that results in a diagnostic misadministration, and failure to make a report as required by proposed § 35.34(d) or (e); at Severity Level IV, failure to follow procedures of a QA program not amounting to Severity Level I, II, or III, or other violation resulting in a diagnostic misadministration, and failure to make a report as required by proposed § 35.33(d).

VI. Implementation Plan and Agreement State Compatibility

The NRC is proposing the effective date of the amendment to be six months after the publication date of the final amendment in the **Federal Register**. On or before the effective date, all medical use licensees must have their basic QA programs developed and implemented, and submit to the NRC a written certification that the QA program has been implemented. As part of NRC's inspection program, NRC contract inspectors will determine whether the QA program has been fully implemented. An application for a new medical use license or renewal submitted to the NRC will have to include a written basic QA program as part of the license application. Medical use licensees will be subject to the revised reporting and recordkeeping sections of the amendment on the effective date.

Because the proposed amendment has safety significance for the Agreement State licensees as well as the NRC licensees, it will be a matter of compatability for the Agreement States.

VII. Administrative Statements

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this amendment, if adopted, would not be a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement is not required. The proposed amendment would require NRC medical use licensees to establish a written

basic QA program to prevent, detect, and correct the cause of errors in medical use. The proposed QA requirements and a regulatory guide have been developed to include generally accepted good practices in basic medical quality assurance and include specific measures intended to prevent many of the kinds of human error observed and reported to the NRC over a number of years. Based on analysis of reported therapy misadministrations the Commission expects that the proposed requirements will provide assurance that the safety of patients involved in medical use will be enhanced by reducing the frequency of certain types of misadministrations. The NRC is also proposing to modify the reporting and recordkeeping requirements for medical use.

The proposed amendments, if adopted by the NRC and implemented by licensees, would likely result in fewer errors in medical use and, thus, would likely reduce unnecessary radiation exposures. It is expected that there would be no increase in radiation exposure to the public or to the environment beyond the exposures currently resulting from delivering the dose to the patient. The draft environmental assessment and finding of no significant impact on which this determination is based is available for inspection at the NRC Public Document Room, 2120 L Street NW., Lower Level, Washington, DC. Single copies of the draft environmental assessment and the finding of no significant impact are available from Dr. Tse (see **ADDRESSES** heading).

Paperwork Reduction Act Statement

This proposed amendment modifies information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This rulemaking has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

Public reporting burden for this collection of information is estimated to be about 64,650 hours per year (for 2,500 NRC licensees and 5,000 Agreement State licensees) or an average of about 9 hours per licensee, including the time for reviewing instructions, searching existing data sources, collecting and maintaining the data needed, and reviewing the collection for completeness. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Records and Reports Management Branch, Division of Information Support Services, Office of Information Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Paperwork Reduction Project (3150–0010), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis for the proposed amendment. The analysis examines the benefits and impacts considered by the NRC. The draft regulatory analysis is available for inspection at the NRC Public Document Room at 2120 L Street NW., Lower Level, Washington, DC. Single copies are available from Dr. Tse (see **ADDRESSES** heading).

The Commission requests public comments on the draft regulatory analysis. Comments are specifically requested on (a) factors affecting the balance between benefits to patients from lower rates of human errors and the values of resources that would be needed to produce these lower rates and (b) whether these resources could be used in other ways to better optimize patient safety and treatment than could be accomplished through development and implementation of QA programs for medical use. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this amendment, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed amendment affects about 2,500 NRC medical use licensees under 10 CFR part 35. Of these, about 2,200 licenses are issued to institutions and 300 are issued to physicians in private practice. Under the size standards adopted by the NRC (50 FR 50241, December 9, 1985), some medical use licensees could be considered "small entities" for purposes of the Regulatory Flexibility Act (average gross annual receipts do not exceed $3.5 million for an institution and do not exceed $1 million for a private practice physician). The number of medical use licensees that would fall into the small entity category is estimated to be a very small percentage of the total number of licensees and does not constitute a substantial number for purposes of the Regulatory Flexibility Act.

The proposed amendment would require NRC medical use licensees to establish a written basic QA program to prevent, detect, and correct the cause of errors in medical use. The NRC is also proposing to modify the reporting and recordkeeping requirements relating to such medical use. The Commission believes that most licensees currently have a quality assurance program that is designed to prevent errors in medical use. Furthermore, all medical use licensees are currently subject to the existing reporting and recordkeeping requirements which, except for certain clarifications, are not significantly different from the proposed reporting and recordkeeping requirements. Therefore, there should not be a significant economic impact on these small entities. (See the Regulatory Analysis for the anticipated economic impact of this regulation on licensees.)

There is a potential that the gains in patient protection will outweigh the economic impact for medical use licensees, including the small entity licensees. However, because there are uncertainties in the analysis of these benefits and impacts, the NRC is seeking comments and suggested modifications because of the widely differing conditions under which medical use licensees operate.

Any small entity subject to this regulation who determines that, because of its size, it is likely to bear a disproportionately adverse economic impact should notify the Commission in a letter that indicates the following:

(a) The licensee's size and how the proposed regulation would result in a significant economic burden or whether the resources necessary to establish a QA program could be more effectively used in other ways to optimize patient safety, as compared to the economic burden on a larger licensee.

(b) How the proposed regulations could be modified to take into account the licensee's differing needs or capabilities.

(c) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulation were modified as suggested by the licensee.

(d) How the proposed regulation, as modified, could more closely equalize the impact of NRC regulations or create more equal access to the benefits of federal programs as opposed to providing special advantages to any individual or group.

(e) How the proposed regulation, as modified, would still adequately protect the public health and safety.

Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed amendment, and thus, a backfit analysis is not required for this proposed amendment, because it

does not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

VIII. List of Subjects in 10 CFR Part 35

Byproduct material, Drugs, Health devices, Health professions, Incorporation by reference, Medical devices, Nuclear materials, Occupational safety and health, Penalty, Radiation protection, Reporting and recordkeeping requirements.

IX. Text of Proposed Regulation

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 533, the NRC is proposing to adopt the following amendments to 10 CFR part 35.

PART 35—MEDICAL USES OF BYPRODUCT MATERIAL

1. The authority citation for part 35 is revised to read as follows:

Authority: 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273): §§ 35.11, 35.13, 35.20 (a) and (b), 35.21 (a) and (b), 35.22, 35.23, 35.25, 35.27 (a), (c) and (d), 35.31(a), 35.35, 35.49, 35.50(a)–(d), 35.51(a)–(c), 35.53 (a) and (b), 35.59(a)–(c), (e)(1), (g) and (h), 35.60, 35.61, 35.70(a)–(f), 35.75, 35.80(a)–(e), 35.90, 35.92(a), 35.120, 35.200(b), 35.204 (a) and (b), 35.205, 35.220, 35.310(a), 35.315, 35.320, 35.400, 35.404(a), 35.406 (a) and (c), 35.410(a), 35.415, 35.420, 35.500, 35.520, 35.605, 35.606, 35.610 (a) and (b), 35.615, 35.620, 35.630 (a) and (b), 35.632(a)–(f), 35.634(a)–(e), 35.636 (a) and (b), 35.641 (a) and (b), 35.643 (a) and (b), 35.645 (a) and (b), 35.900, 35.910, 35.920, 35.930, 35.932, 35.934, 35.940, 35.941, 35.950, 35.960, 35.961, 35.970, and 35.971 are issued under sec. 161b., 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 35.14, 35.21(b), 35.22(b), 35.23(b), 35.27 (a) and (c), 35.29(b), 35.33(a)–(f), 35.34(a)–(g), 35.36(b), 35.50(e) 35.51(d), 35.53(c), 35.59 (d) and (e)(2), 35.59 (g) and (i), 35.70(g), 35.80(f), 35.92(b), 35.204(c), 35.310(b), 35.315(b), 35.404(b), 35.406 (b) and (d), 35.410(b), 35.415(b), 35.610(c), 35.615(d)(4), 35.630(c), 35.632(g), 35.634(f), 35.636(c), 35.641(c), 35.643(c), 35.645, and 35.647(c) are issued under sec. 161o., 68 Stat. 950, as amended (42 U.S.C. 2201 (o)).

2. In § 35.2, the term "misadministration" is revised and the terms "basic quality assurance," "clinical procedures manual," "diagnostic event," "diagnostic referral," "prescribed dosage," "prescribed dose," "prescription," and "therapy event" are added to read as follows:

§ 35.2 Definitions.

* * * * *

Basic quality assurance means, for the purposes of this part, the aggregate of those planned and systematic actions designed to prevent the occurrence of any error in medical use produced by, made by, caused by, or attributable to any individual acting on behalf of the licensee (including omissions or commissions).

* * * * *

Clinical procedures manual means a collection of written procedures in a single binder that describes each method (and other instructions and precautions) by which the licensee performs clinical procedures; each diagnostic clinical procedure approved by the authorized user for medical use includes the radiopharmaceutical, dosage, and route of administration.

* * * * *

Diagnostic event means any medical use for which a record, and under certain circumstances a report, are required pursuant to § 35.33(a).

* * * * *

Diagnostic referral means a written request dated and signed by a physician before a diagnostic medical use that includes the patient's name, diagnostic clinical procedure, and clinical indication.

* * * * *

Misadministration means any error in medical use as described in §§ 35.33(b) or 35.34(b) for which a record, and under certain circumstances a report, are required pursuant to §§ 35.33 (c) and (d) or 35.34 (c), (d), and (e).

* * * * *

Prescribed dosage means the quantity of radiopharmaceutical activity as documented before administration of the radiopharmaceutical, either (a) on the prescription or (b) in the clinical procedures manual if the procedure is performed pursuant to a diagnostic referral.

* * * * *

Prescribed dose (a) In teletherapy, means the quantity of the radiation absorbed dose stated on the prescription, as documented before administration, or (b) In brachytherapy, means the quantity of the radiation absorbed dose or equivalent stated on the prescription, as documented before administration and as revised to reflect actual loading of the source or sources immediately after implantation.

* * * * *

Prescription means a written direction or order for medical use for a specific patient, dated and signed by an authorized user or a physician under the supervision of an authorized user, containing the following information:

(a) For diagnostic use of radiopharmaceuticals: the radioisotope, dosage, chemical form, and route of administration;

(b) For radiopharmaceutical therapy: the radioisotope, dosage, physical form, chemical form, and route of administration;

(c) For teletherapy: the total dose, number of fractions, and treatment site; or

(d) For brachytherapy: the total dose (or treatment time, number of sources, and combined activity), radioisotope, and treatment site.

* * * * *

Therapy event means any medical use for which a record and a report are required pursuant to § 35.34(a).

* * * * *

3. § 35.33 is revised to read as follows:

§ 35.33 Records and reports of diagnostic events or misadministrations.

(a) A diagnostic event for which a record, and under certain circumstances a report, is required (as set forth in paragraph (d) of this section) consists of the following:

(1) Any diagnostic medical use not authorized in the license;

(2) Any diagnostic medical use without a prescription or a diagnostic referral; or

(3) Any diagnostic medical use without daily recording the administered radiation dose or radiopharmaceutical dosage in the appropriate record.

(b) A diagnostic misadministration for which a record, and under certain circumstances a report, is required (as set forth in paragraphs (c) and (d) of this section) consists of the following:

(1) Any diagnostic medical use other than the one stated in the prescription or in the diagnostic referral [1] and clinical procedures manual. Incorrect medical use would include treatment of the wrong patient, administration of the wrong radiopharmaceutical or radiation from the wrong sealed source, administration of a radiopharmaceutical or radiation to the wrong organ or site, or via the wrong or unintended route of administration; or

(2) Any diagnostic medical use such that errors result in an administered dosage differing from the prescribed

[1] If, because of the emergent nature of the patient's condition, a delay in order to provide a written prescription or diagnostic referral would jeopardize the patient's health, an oral instruction may be acceptable, but a written record (containing the information specified in § 35.2 for a prescription or diagnostic referral) shall be made in the patient's record within 24 hours.

dosage by more than 50 percent of the prescribed dosage.

(c) For any diagnostic medical use that results in a diagnostic event or misadministration as described in paragraphs (a) and (b) of this section, the Radiation Safety Officer shall promptly investigate its cause, make a record for NRC review, retain the record as directed in paragraph (e) of this section, and notify the licensee management to take appropriate corrective action.

(d) The licensee shall notify the referring physician and the appropriate NRC Regional Office in accordance with 10 CFR 30.6 in writing within 15 days of the discovery of the diagnostic event or misadministration if it involved the use of byproduct material not authorized for medical use in the license, administration of a dosage differing by at least five-fold from the prescribed dosage, or administration of byproduct material such that the patient is likely to receive an organ dose greater than 2 rem or a whole body dose greater than 0.5 rem. Licensees may use dosimetry tables in package inserts, corrected only for the amount of radioactivity administered, to determine whether a report is required. The written report must include the licensee's name; the prescribing physician's name; a brief description of the event; why the event occurred; the effect on the patient; what improvements are needed to prevent recurrence; actions taken to prevent recurrence, and for a diagnostic event or misadministration for which notification to the patient is required (as set forth below), whether the licensee informed the patient or the patient's responsible relative (or guardian), and if not, why not. The report to the NRC must not include the patient's name or other information that could lead to identification of the patient. If the diagnostic event or misadministration involved the administration of iodine and has the potential to cause serious harm to the patient (e.g., a microcurie amount was prescribed but more than 1 millicurie was administered), the licensee shall also notify the patient or a responsible relative (or guardian) within 24 hours after the licensee discovers such a diagnostic event or misadministration, unless the referring physician agrees to inform the patient or believes, based on medical judgment, that telling the patient or the patient's responsible relative (or guardian) would be harmful to one or the other. If the referring physician, patient, or the patient's responsible relative (or guardian) cannot be reached within 24 hours, the licensee shall notify them as soon as practicable. The licensee is not required to notify the patient or the patient's responsible relative (or guardian) without first consulting the referring physician; however, the licensee shall not delay medical care for the patient because of any delay in notification.

(e) Each licensee shall retain the following records:

(1) Each prescription, diagnostic referral, and record of administered radiation dose or radiopharmaceutical dosage, in an auditable form, for three years after the date of administration;

(2) Each written diagnostic clinical procedure, in an auditable form, for three years after its last use; and

(3) The report of each diagnostic event or misadministration for ten years. The record must contain the names of all individuals involved in the event (including the prescribing physician, allied health personnel, the patient, and the patient's referring physician), the patient's social security number or identification number if one has been assigned, a brief description of the event or misadministration, why the event or misadministration occurred, the effect on the patient, what improvements are needed to prevent recurrence, and the actions taken to prevent recurrence.

(f) Aside from the notification requirement, nothing in this section affects any rights or duties of licensees and physicians in relation to each other, patients, or responsible relatives (or guardians).

4. § 35.34 is added to read as follows:

§ 35.34 Records, reports, and notification of therapy events or misadministrations.

(a) A therapy event for which a record and report to licensee management are required consists of the following:

(1) Any therapeutic medical use without both a prescription [2] and a prior review of the patient's case by an authorized user or a physician under the supervision of an authorized user;

(2) Any therapeutic medical use without daily recording in the appropriate record the administered radiation dose or radiopharmaceutical dosage;

(3) A teletherapy administration from a sealed source such that errors in the source calibration, the time of exposure, treatment geometry, or other errors result in an administered fractional dose differing from the prescribed fractional dose by more than 20 percent of the prescribed fractional dose, but less than the percentage of fractional dose set forth below in paragraph (b)(3)(ii) of this section; or

(4) Any therapeutic medical use not authorized by the license.

(b) A therapy misadministration for which records and reports to the NRC and licensee management are required consists of the following:

(1) Any therapeutic medical use other than the one stated in the prescription, including treatment of the wrong patient, administration of the wrong radiopharmaceutical or radiation from the wrong sealed source, administration of a radiopharmaceutical or radiation to the wrong target organ or treatment site, or via the wrong or unintended route of administration;

(2) Any therapeutic medical use of a radiopharmaceutical such that errors result in an administered dosage differing from the prescribed dosage by more than 10 percent of the prescribed dosage;

(3) A teletherapy administration from a sealed source such that errors in the source calibration, the time of exposure, treatment geometry, or other errors result in any of the following:

(i) The administered total dose differing from the prescribed total dose by more than 10 percent of the prescribed total dose;

(ii) For any treatment fraction, the administered fractional dose being greater than twice or less than one-half of the prescribed fractional dose, or

(iii) For the fractions administered to date, the sum of the administered fractional doses differing from the sum of the prescribed fractional doses by more than 10 percent of the prescribed total dose;

(4) A brachytherapy administration with a sealed source that is leaking, is lost, or is unrecoverable during the brachytherapy treatment; or

(5) A brachytherapy administration such that errors in brachytherapy treatment planning or execution result in the prescribed dose differing from the administered dose by more than 20 percent of the prescribed dose.

(c) For any medical use that results in a therapy event or misadministration as described in paragraphs (a) and (b) of this section, the Radiation Safety Officer shall promptly investigate its cause, make a record for NRC review, retain the record as directed in paragraph (f) of this section, and notify the licensee management to take appropriate corrective action.

(d) For any medical use that results in a therapy event as described in

[2] If, because of the emergent nature of the patient's condition, a delay in order to provide a written prescription would jeopardize the patient's health, an oral instruction may be acceptable, but a written record (containing the information specified in § 35.2 for a prescription) shall be made in the patient's record within 24 hours.

paragraph (a)(4) or a misadministration as described in paragraph (b) of this section, the licensee shall notify by telephone the appropriate NRC Regional Office listed in Appendix D of 10 CFR part 20 no later than the next Federal Government working day after discovery of the therapy event or misadministration. The licensee shall also notify the referring physician of the affected patient and the patient or a responsible relative (or guardian) within 24 hours after the licensee discovers the therapy misadministration, unless the referring physician agrees to inform the patient or believes, based on medical judgment, that telling the patient or the patient's responsible relative (or guardian) would be harmful to one or the other. If the referring physician, patient, or the patient's responsible relative (or guardian) cannot be reached within 24 hours, the licensee shall notify them as soon as practicable. The licensee is not required to notify the patient or the patient's responsible relative (or guardian) without first consulting the referring physician; however, the licensee shall not delay medical care for the patient because of any delay in notification.

(e) Within 15 days after an initial telephone report to NRC of a therapy event or misadministration, the licensee shall report, in writing, to the NRC Regional Office initially telephoned and to the referring physician and shall furnish a copy of the report to the patient or the patient's responsible relative (or guardian) if either was previously notified by the licensee under paragraph (d) of this section. The written report must include the licensee's name, the prescribing physician's name, a brief description of the event or misadministration, why the event or misadministration occurred, the effect on the patient, what improvements are needed to prevent recurrence, the actions taken to prevent recurrence, whether the licensee informed the patient or the patient's responsible relative (or guardian) and if not, why not. The report must not include the patient's name or other information that could lead to identification of the patient.

(f) Each licensee shall retain the following records:

(1) Each prescription and record of administered radiation dose or radiopharmaceutical dosage, in an auditable form, for three years after the date of administration; and

(2) The report of each therapy event or misadministration for ten years. The record must contain the names of all individuals involved in the event (including the prescribing physician, allied health personnel, the patient, and the patient's referring physician), the patient's social security number or identification number if one has been assigned, a brief description of the event or misadministration, why the event or misadministration occurred, the effect on the patient, what improvements are needed to prevent recurrence, and the action taken to prevent recurrence.

(g) Aside from the notification requirement, nothing in this section affects any rights or duties of licensees and physicians in relation to each other, patients, or responsible relatives (or guardians).

5. § 35.35 is added to read as follows:

§ 35.35 Basic quality assurance program.

(a) Each applicant or licensee under this part shall establish a written basic quality assurance program to prevent, detect, and correct the cause of errors in medical use. The objective of the basic quality assurance program is to provide high confidence that errors in medical use will be prevented. This basic quality assurance program must include written policies and procedures to meet the following specific objectives:

(1) Ensure that any medical use is indicated for the patient's medical condition;

(2) Ensure, prior to any medical use, that a prescription [3] is made for any therapy procedure and any diagnostic radiopharmaceutical procedure involving more than 30 microcuries of I–125 or I–131;

(3) Ensure, prior to any medical use, that a prescription or a diagnostic referral [3] is made for any diagnostic procedure not involving more than 30 microcuries of I–125 or I–131;

(4) Ensure, prior to any medical use, that the prescription or the diagnostic referral and clinical procedures manual is understood by the responsible individuals;

(5) Ensure that any medical use is in accordance with a prescription or a diagnostic referral and clinical procedures manual;

(6) Ensure, prior to any medical use, that the patient's identity is verified as the individual named on the prescription or the diagnostic referral;

(7) Ensure that any unintended deviation from a prescription or a diagnostic referral and clinical procedures manual is identified and evaluated, and

(8) Ensure that brachytherapy and teletherapy treatment planning is in accordance with the prescription.

(b)(1) The licensee shall develop procedures for and conduct a comprehensive audit at intervals no greater than 12 months to verify compliance with all aspects of the basic quality assurance program. The licensee's management shall evaluate each of these audits to determine the effectiveness of the basic quality assurance program and promptly implement modifications within 30 days that will prevent the recurrence of errors in medical use. The licensee shall maintain records of each audit and management evaluation, in an auditable form, for three years.

(2) The licensee may make modifications to the approved basic quality assurance program without NRC approval only if the modifications do not decrease or potentially decrease the effectiveness of the basic quality assurance program. The licensee shall furnish the modification to the appropriate NRC Regional Office in accordance with 10 CFR 30.6 within 15 days after the modification is made. Modifications that decrease, or potentially decrease, the effectiveness of the approved basic quality assurance program may not be implemented without prior application to and approval by the NRC.

(c)(1) Each applicant for a new license shall submit to the appropriate NRC Regional Office in accordance with 10 CFR 30.6 a basic quality assurance program as part of the application for a license and implement the program upon issuance of the license by the NRC.

(2) Each existing licensee shall submit to the appropriate NRC Regional Office in accordance with 10 CFR 30.6 by (insert effective date) a written certification that a basic quality assurance program designed in accordance with this section has been implemented.

(3) Each license shall maintain the written basic quality assurance program, in an auditable form, for the duration of the license.

Dated at Rockville, Maryland, this 8th day of January, 1990.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 90–821 Filed 1–12–90; 8:45 am]

BILLING CODE 7590–01–M

[3] If, because of the emergent nature of the patient's condition, a delay in order to provide a written prescription or diagnostic referral would jeopardize the patient's health, an oral instruction may be acceptable, but a written record (containing the information specified in § 35.2 for a prescription or diagnostic referral) shall be made in the patient's record within 24 hours.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-CE-33-AD]

Airworthiness Directives; deHavilland Model DHC-3 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new Airworthiness Directive (AD), applicable to deHavilland Model DHC-3 airplanes, which would require inspection of the tailplane structure for cracks, and if necessary, replacement with an improved part. There have been reports of airplanes with the main rib forward flange and the forward lower flange cracked at the tailplane front attachment fitting. The actions specified in this proposal will detect and correct this condition and preclude failure of the tailplane structure.

DATES: Comments must be received no later than March 2, 1990.

ADDRESSES: deHavilland Service Bulletin (S/B) No 3/46, Revision "B", dated December 1, 1989, applicable to this AD, may be obtained from Boeing of Canada, Ltd., deHavilland Division, Garrett Boulevard, Downsview, Ontario, Canada M3K 1Y5. This information may also be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Regional, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89-CE-33-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Socias, Aerospace Engineer, Airframe Branch, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581; Telephone (516) 791-6220.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered before taking action on the proposed rule. The proposals contained in this notice may be taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, office of the Assistant Chief Counsel, Attention: Rules Docket No. 89-CE-33-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

Field reports have been received by Boeing Canada, deHavilland Divisions stating that several Model DHC-3 airplanes have experienced cracking of the main rib forward flange and the forward lower flange at the tailplane front attachment fitting location.

As a result, Boeing Canada, deHavilland Division has issued Service Bulletin 3/46, Revision B, dated December 1, 1989, which recommends an initial and recurring dye penetrant inspection based on calendar time for cracks of the main rib forward flange and the forward lower flange on deHavilland Model DHC-3 airplanes, and a repair procedure using improved parts if cracks are found. The usual method of specifying an inspection interval to detect metal fatigue for this type of airplane is flying hours. However, in this case, it has not been determined whether the rib flange cracking is a result of inflight loads (flight hours) or loads due to ground gusts. Therefore, airplanes with lower usage may experience a cracked rib flange before an airplane with higher usage. For this reason, calendar time rather than flight hours is judged to be an appropriate inspection basis.

Transport Canada, which has responsibility and authority to maintain the continuing airworthiness of these airplanes in Canada, has classified this service bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes, and is in the process of drafting an Airworthiness Directive addressing this subject. On airplanes operated under Canadian registration, this action will have the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of Transport Canada combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this type design certificated for operation in the United States. The FAA has examined the available information related to the issuance of Service Bulletin No. 3/46, Rev. B, dated December 1, 1989. Based on the foregoing, the FAA believes that the condition addressed by deHavilland Service Bulletin No. 3/46, Revision B, is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD would require initial and recurring dye penetrant inspections of the main rib forward flange and forward lower flange at the tailplane front attachment fitting for cracks, on deHavilland Model DHC-3 airplanes, and a report procedure using improved parts.

The FAA has determined there are approximately 49 airplanes affected by the proposed AD. The cost of the inspections and repair, if necessary as required by the proposed AD, is estimated to be $1400 per airplane. The total cost is estimated to be $68,600. Few, if any, small entities affected by this proposal own sufficient airplanes to cause their cost of compliance to equal or exceed the significant thresholds of the Regulatory Flexibility Act. The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Boeing Canada, deHavilland Division: Applies to Model DHC-3 (all serial numbers) airplanes certificated in any category.

Compliance: Required as indicated in the body of this AD, unless previously accomplished.

To prevent failure of the tailplane structure, accomplish the following:

(a) Within the next three calendar months after the effective date of this AD, and thereafter at intervals not to exceed two calendar years, perform the following inspection in accordance with deHavilland Service Bulletin No. 3/46, Revision "B", dated December 1, 1989.

(1) Perform a dye penetrant inspection of the main rib forward flange to front spar attachment fitting.

Note 1: Pay particular attention to the front attachment fitting area.

(2) Perform a dye penetrant inspection of the forward lower flange to front spar attachment fitting.

(3) Prior to further flight, repair any cracked main rib forward flange and any cracked forward lower flange in accordance with the above deHavilland Service Bulletin.

(b) An alternate method of compliance or adjustment of the initial or repetitive compliance times which provides an equivalent level of safety may be approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

Note 2: The request should be forwarded through an FAA Maintenance Inspection who may add comments and send it to the Manager, New York Aircraft Certification Office.

All persons affected by this directive may obtain copies of the document referred to herein upon request to Boeing Canada, deHavilland Division, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on December 15, 1989.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-917 Filed 1-12-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-CE-35-AD]

Airworthiness Directives; Siai Marchetti F260 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to Siai Marchetti F260 series airplanes which would require inspection for cracks on the landing gear bellcrank pivot bolts and replacement of any bolts found cracked or not of the current design. This action is based upon a recent manufacturer's recommendation. It will prevent failure of the main landing gear.

DATE: Comments must be received on or before March 2, 1990.

ADDRESSES: Siai Marchetti Service Bulletin (SB) 260-B46, dated February 6, 1989, applicable to this AD may be obtained from Siai Marchetti Sp.A, Product Support Department, 21018 Sesto Calinda, Italy; Telephone 0331 924842/923598. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of Assistant Chief Counsel, Attention: Rules Docket No. 89-CE-35-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Carl Mittag, Aircraft Certification Office, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium; Telephone (322) 513.38.30; or Richard F. Yotter, Aerospace Engineer, Aircraft Certification Service, 601 E. 12th Street, Kansas City, Missouri; Telephone (816) 426-6932.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submited in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89-CE-35-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

AD 75-22-19, Amendment 39-2388, requires inspection and replacement of bolt Part Number (P/N) 260-14-35-1 with bolt P/N 260-14-35-3 on Siai Marchetti F260 series airplanes. Subsequently, Siai Marchetti Service Bulletin 260-B36 specified the replacement of bolt P/N 260-14-35-3 with bolt P/N 260-14-35-5. SB 260-B46 was then issued specifying inspections for cracks of bolts P/N 260-14-35-5 or 260-19-03-13. Further, the longer length P/N 260-19-03-13 bolts are required when the airplane is modified per SB 260-B50. The FAA has evaluated Siai Marchetti's recommendation for installation of main landing gear bellcrank pivot bolts that are different from those specified in AD 75-22-19, and determined that the AD should be superseded with a new AD containing the latest manufacturer's recommended actions.

Siai Marchetti has issued SB 260-B46, dated February 6, 1989, which specifies the inspection of all P/N 260-14-35-5 bolts and replacement of these bolts if they are found cracked. The Registro Aeronautico Italiano (RAI), which has responsibility and authority to maintain

the continuing airworthiness of these airplanes in Italy, has classified this SB and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under Italian registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of RAI combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this type design certified for operation in the United States. The FAA has examined the available information related to the issuance of Siai Marchetti SB 260–B46, dated February 6, 1989, and the mandatory classification of this SB by the RAI. Based on the foregoing, the FAA believes that the condition addressed by the RAI is an unsafe condition that may exist on other products of this type design certified for operation in the United States. Consequently, the proposed AD would require inspection for cracks of the main landing gear bellcrank pivot bolts and replacement of bolts found cracked or not of the current configuration.

The FAA has determined there are approximately 12 airplanes affected by the proposed AD. The cost to remove, inspect, and replace the bolts in accordance with the proposed AD is estimated to be $300 per airplane. The total cost is estimated to be $3,600. The cost of compliance with the proposed AD is so small that the expense of compliance will not have a significant financial impact on any small entities operating these airplanes.

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

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES".**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 75–22–19, Amendment 39–2388, with the following new AD:

Siai Marchetti: Applies to Models F260, F260B, F260C, and F260D (Serial Numbers 1 thru 764) airplanes certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent failure of the main landing gear, accomplish the following:

(a) Remove bellcrank pivot bolts for the main landing gear and install serviceable bellcrank pivot bolts, Part Number 260–14–35–5 or 260–19–03–13, after magnetic-particle inspecting the bolts and assuring they are free of cracks in accordance with SIAI Marchetti Service Bulletin No. 260–B46, dated February 6, 1989.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An alternate method of compliance or adjustment of the compliance time which provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium.

Note: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and send it to the Manager, Brussels Aircraft Certification Office.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Siai Marchetti, Product Support Department, 21018 Sesto Calinda, Italy; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment supersedes AD 75–22–19, Amendment 39–2388.

Issued in Kansas City, Missouri, on December 19, 1989.

J. Robert Ball,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–918 Filed 1–12–90; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 89–AWP–25]

Proposed Alteration of VOR Federal Airway; California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of VOR Federal Airway V–111 located in the vicinity of San Jose, CA., The realignment of this airway is necessary to improve the flow of traffic around the congested San Jose metropolitan area. Congestion caused by increased air traffic inbound to San Jose utilizing the instrument landing system (ILS) routinely requires the rerouting of aircraft destined for east bay airports and Sacramento, CA, airports, thereby adding substantial miles to their route. This action would improve traffic flow in this area while reducing the flying time of overflights and reducing controller workload.

DATE: Comments must be received on or before February 26, 1990.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AWP–500, Docket No. 89–AWP–25, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Alton D Scott, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9252.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed relemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stampted postcard on which the following statement is made: "Comments to Airspace Docket No. 89–AWP–25." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the description of VOR Federal Airway V–111. This action would substantially increase the efficiency of overflights in the vicinity of San Jose destined for east bay airports and Sacramento airports. Congestion caused by increased air traffic inbound to San Jose utilizing the ILS routinely requires the rerouting of overflights in this area. During busier periods this route is virtually unusable, requiring the issuance of preferential routes by controllers which adds substantial miles to aircraft overflying this area and increases controller workload. The adjustment of this route is designed to alleviate congestion/compression of air traffic and to establish optimum use of the airspace. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

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

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

The Proposed Amendment

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

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

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

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

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–111 [Revised]

From Big Sur, CA, via Salinas, CA; INT Salinas 054°T(037°M) and Modesto, CA, 188°T(171°M) radials; to Modesto.

Issued in Washington, DC, on December 29, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 90–920 Filed 1–12–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 89–ASW–48]

Proposed Revision of Transition Area; Ada, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to notice of proposed rulemaking; extension of comment period.

SUMMARY: The original notice, which was published in the **Federal Register** on November 11, 1989, proposed to revise the transition area located at Ada, OK. The development of a new VOR/DME RWY 17 standard instrument approach procedure (SIAP), utilizing the Ada Very High Frequency Omnidirectional Radio Range (VOR), has made this proposed revision necessary. However, in the original airspace document, the arrival extension north of the Ada Municipal Airport was incorrectly described. The intended effect of this airspace docket is to correctly describe the north arrival extension of the revised Ada, OK, Transition Area. The comment period for this airspace docket is also being extended.

DATE: Comments must be received on or before February 16, 1990.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 89–ASW–48, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Forth Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, System Management Branch, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193–0530; telephone: (817) 624–5561.

SUPPLEMENTARY INFORMATION:

History

Airspace Docket No. 89–ASW–48, published on Thursday, November 30, 1989, (54 FR 49306/FR Document 89–

28013) proposed to revise the Ada, OK, Transition Area. An error was discovered in the written description of the north arrival extension of the transition area. This action corrects that error.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Correction to Proposal

Accordingly, pursuant to the authority delegated to me, the regulatory text of the notice of proposed rulemaking (**Federal Register** document No. 89–28013), as published on November 11, 1989 (54 FR 49306), is corrected to read as follows:

PART 71—[CORRECTED]

§ 71.181 [Corrected]

1. Under "§ 71.181 [Amended]" (page 49307, column 2), the legal description should read as follows:

Ada, OK [Corrected]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Ada Municipal Airport (latitude 34°48'20" N., longitude 96°40'14" W.), and within 3.5 miles each side of the 355° radial of the Ada VOR (latitude 34°48'09" N., longitude 96°40'12" W.), extending from the 6.5-mile radius area to 16.5 miles north of the Ada Municipal Airport.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 90–921 Filed 1–12–90; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 89–AEA–21]

Proposed Establishment of Transition Area; Louisa, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commonwealth of Virginia proposes to install a Nondirectional Radio Beacon (NDB) for the Louisa County/Freeman Field Airport, Louisa, VA, to support the development of a Standard Instrument Approach Procedure (SIAP) predicated on this navigational aid. The FAA finds it necessary to establish a 700 foot transition area to accommodate the new SIAP. The intended effect of this proposed action is to ensure segregation of the aircraft using the SIAP in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATE: Comments must be received on or before February 28, 1990.

ADDRESS: Send comments on the rule in triplicate to: Edward R. Trudeau, Manager, System Management Branch, AEA–530, Docket No. 89–AEA–21, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the System Management Branch, AEA–530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA–530, Federal Aviation Administration., Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamacia, New York 11430; telephone: (718) 917–0857

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comment that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–AEA–21". The postcard will be date/time stamped and returned to the commenter. All comunications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Cheif Counsel, AEA–7, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a 700 foot transition area at the Louisa County/Freemen Field Airport, Louisa, VA to accommodate a proposed SIAP to the Airport based upon an NDB to be installed by the Commonwealth of Virginia. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It,

therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the critieria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition areas.

The Proposed Amendment

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

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

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

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

§71.181 [Amended]

2. Section 71.181 is amended as follows:

Louisa, VA [New]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the center (lat. 38°00'37" N., long. 77°58'04" W.) of the Louisa County/Freemen Field Airport, Louisa, VA; within 2 miles either side of a 266°(T) 272°(M) bearing extending from 1 mile west of the Louisa, VA, NDB (lat. 38°01'13" N., long. 77°51'34" W.) to the 5-mile radius area.

Issued in Jamaica, New York, on December 5, 1989.

John D. Canoles,

Manager, Air Traffic Division.

[FR Doc. 90-922 Filed 1-12-90; 8:45 am]

BILLING CODE 4510-13-M

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14 CFR Part 75

[Airspace Docket No. 89-AWP-27]

Proposed Establishment of J-236

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish new Jet Route J-236 located between Thermal, CA, and Tuba City, AZ. The establishment of this route is necessary to improve the increasing flow of traffic departing San Diego, CA, and the Los Angeles, CA, basin airports. This new jet route would provide a more precise means of navigation and reduce controller workload.

DATE: Comments must be received on or before February 26, 1990.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AWP-500, Docket No. 89-AWP-27, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-AWP-27." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 75 of the Federal Aviation Regulations (14 CFR part 75) to establish new Jet Route J-236 located between Thermal, CA, and Tuba City, AZ. This route would be established to improve the flow of increasing traffic departing San Diego, CA, and the Los Angeles, CA, basin airports. Aircraft departing these airports routinely file via Thermal, CA, Needles CA, and Tuba City, AZ. Frequent off-course deviations (as much as 10-15 nautical miles) have caused a considerable increase in controller workload and coordination. The adjustment of this route is designed to alleviate off-course deviations and to establish optimum use of the airspace. Section 75.100 of part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

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

certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 75 of the Federal Aviation Regulations (14 CFR part 75) as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for part 75 continues to read as follows:

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

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-236 [New]

From Thermal, CA; Needles, CA; to Tuba City, AZ.

Issued in Washington, DC, on December 29, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 90-916 Filed 1-12-90; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Requirements for Child-Resistant Packaging; Proposed Requirements for Household Glue Removers Containing Acetonitrile and Home Cold Wave Permanent Neutralizers Containing Sodium Bromate or Potassium Bromate

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rules.

SUMMARY: Under the Poison Prevention Packaging Act of 1970, the Commission is proposing to require child-resistant packaging for (1) household glue removers, in liquid form, containing more than 500 mg of acetonitrile in a single container and (2) home permanent neutralizers, in liquid form, containing in a single container (a) more than 600 mg of sodium bromate or (b) more than 50 mg of potassium bromate. These requirements are proposed because the Commission has preliminarily determined that child-resistant packaging is required to protect children under five years of age from serious personal injury and serious illness resulting from ingesting such substances.

DATE: Comments on the proposal should be submitted not later than April 2, 1990.

ADDRESSES: Comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 528, 5401 Westbard Avenue, Bethesda, Maryland, telephone (301) 492-6800.

FOR FURTHER INFORMATION CONTACT: Virginia White, (301) 492-6554.

SUPPLEMENTARY INFORMATION:

A. Background

The Poison Prevention Packaging Act of 1970 (the "PPPA"), 15 U.S.C. 1471-1476, authorizes the Commission to establish standards for the "special packaging" of any household substance if (1) the degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance and (2) the special packaging is technically feasible, practicable, and appropriate for such substance. Special packaging, also referred to as "child-resistant packaging," is defined as packaging that is (1) designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and (2) not difficult for normal adults to use properly. (It does not mean, however, packaging which all such children cannot open, or obtain a toxic or harmful amount from, within a reasonable time.) Under the PPPA, effectiveness standards have been established for special packaging (16 CFR 1700.15), as has a procedure for evaluating the effectiveness (§ 1700.20). Regulations have been issued requiring special packaging for a number of household products (§ 1700.14).

By letter dated June 27, 1988, the American Association of Poison Control Centers (AAPCC) petitioned the Commission to require child-resistant packaging for household glue removers containing acetonitrile and home cold wave permanent neutralizers containing sodium bromate or potassium bromate. [1] [1] As justification for establishing special packaging standards for these products, the petitioner cited the high toxicity of acetonitrile and the bromates and cited cases of severe permanent disability and death to young children following accidental ingestion of these products. These requests were docketed as a petition for rulemaking, No. PP 88-2.

On January 25, 1989, the Commission received a similar request from the Cosmetic, Toiletry and Fragrance Association ("CTFA") to require child-resistant packaging for glue removers containing acetonitrile. [3] Since these glue removers were already addressed under petition PP 88-2, CTFA's request was considered a submission in support of that petition.

B. Glue Removers Containing Acetonitrile

1. Toxicity

[2], except where noted otherwise. Acetonitrile is used as a glue remover, often for sculptured nails, and the Commission's Directorate for Health Sciences reports that the acute oral toxicity of acetonitrile has been demonstrated in animals and humans. The mean lethal dose in humans is such that one ounce (24 grams) can be lethal to a 10 kilogram (kg) child. Acetonitrile is also toxic by inhalation and skin absorption. The toxic effects following exposure to the chemical are extremely serious and include respiratory distress, cardiac arrest, convulsions, coma, and possibly death. The toxicity of acetonitrile is most likely related to its metabolism to cyanide.

Medical treatment for acetonitrile poisoning is a lengthy procedure and may be complicated by the delayed onset of toxic effects following exposure. Toxic effects usually do not appear until several hours after exposure; this could cause a delay in seeking medical attention.

The petition contained information on two cases of accidental ingestion by young children of sculptured nail removers containing acetonitrile. The ingested products contained 98 percent acetonitrile. One case was a 16-month-old child weighing 12 kg, who may have ingested up to two tablespoons of the product (approximately 1.9 grams/kg). The child vomited, later experienced respiratory difficulty, was put to bed, and was found dead the next morning. The second case involved a two-year-old child weighing 12.4 kg, who may have ingested as much as one ounce of

[1] Numbers in brackets indicate the number of a relevant document as listed in Appendix 1 to this notice.

the product (approximately 2 grams/kg). This child became seriously ill but recovered after receiving intensive medical treatment.

At least two additional cases of injury to young children following accidental ingestion of acetonitrile glue remover products have been reported to poison centers since the petition was received. In-depth investigations of these cases by the Commission's staff showed that one case was a three-year-old boy who ingested less than a tablespoon of acetonitrile-containing glue remover which the mother had poured into an open dish. [11(d)] This child recovered after being hospitalized under intensive care for five days. The second case involved an 18-month-old boy who ingested approximately one ounce of the product. [11(e)] This child was hospitalized for two days and recovered.

A case reported in the literature of intentional ingestion of 40 grams of acetonitrile (approximately 0.5 gram/kg) by an adult male demonstrates further the severe toxicity of the chemical (at a dose less than that reported for the two cases above involving children). This man experienced severe toxic effects, required extensive medical treatment, and took six months to recover.

The Directorate for Health Sciences concluded that the acute oral toxicity of acetonitrile has been demonstrated in animals and humans and that a one-ounce bottle of acetonitrile can be lethal to a child. Available medical data indicate that treatment of acetonitrile ingestion is complicated by delayed onset of toxicity, the severity of the effects, the complex emergency first aid required, and the protracted, difficult recovery. Thus, it appears that the accidental ingestion of acetonitrile-containing glue remover products by children can cause serious injury, serious illness, and death.

The limited available clinical data for acetonitrile indicate that serious injury or serious illness can occur in young children after ingestion of 0.5 gram/kg. Information is not available on a level of acetonitrile that will not produce serious injury or illness. In lieu of such data, the staff recommended that the known lowest-effect level of acetonitrile in humans be reduced by a factor of 10 (referred to as an "uncertainty factor"). [5] If this is done, glue removers containing more than 500 mg of acetonitrile in a single container should be subject to child-resistant packaging standards. The Commission solicits comments on whether this an appropriate level for regulating glue removers containing acetonitrile.

2. Economic Information

[4] Acetonitrile is used mainly as a solvent and as a chemical intermediate in industrial applications. Its other applications include use as a solvent in artificial fingernail glue removers and removers for cyanoacrylate or "super glues" for household use, and for use by hobbyists in model building. These glue removers are marketed in liquid form. Alternative consumer products are available for these applications.

Artificial fingernail glue removers can be purchased in supermarkets, drug stores, and mass merchandise stores. In addition, products labeled "For Professional Use Only" are readily available for purchase by the general public in retail and "wholesale" beauty supply establishments. Both of the acetonitrile ingestion incidents reported by the petitioner were attributed to artificial fingernail glue removers labeled "For Professional Use Only" that had been purchased by the consumers in beauty supply establishments.

The estimated annual sales of glue removers for cosmetic use is one to two million units, with a market value of approximately $2.5–$5 million. The estimated hobby industry sales of glue removers is one million units annually, with a market value of approximately $3 million.

Although the number of accidental ingestions involving acetonitrile glue removers is low to date, the cost per incident and the potential for death are relatively high. The wide availability of acetonitrile-containing products and their accessibility to young children in the home provide the opportunity for continued accidental ingestions with the potential for serious consequences. At a minimum, all such ingestions require extensive medical treatment, and some may be fatal. The Commission's Directorate for Economic Analysis concludes that, although it is not possible to estimate the future annual costs of acetonitrile ingestions, it seems reasonable that avoiding even a small number of ingestions, and the possibility of death, by requiring child-resistant closures has the potential for large benefits to consumers.

Cost to industry to comply with a special packaging regulation are also difficult to estimate, since the Commission does not have information on the market share of acetonitrile-containing products targeted for cosmetic and hobby use. If manufacturers elect to use substitute chemicals, increased costs are unlikely, since the substitutes may cost even less. The subsequent effect on market share, however, is unknown. Manufacturers who do not reformulate their products may experience increased costs for child-resistant packaging.

3. Technical Feasibility, Practicability, and Appropriateness

In issuing a standard for special packaging under the PPPA, the Commission is required by section 3(a)(2) of the PPPA, 15 U.S.C. 1472(a)(2), to find that the special packaging is "technically feasible, practicable, and appropriate."

a. *Technical feasibility.* [7] Household glue removers containing acetonitrile that are sold for use in removing or debonding glues for artificial, or sculptured, fingernails are marketed in small bottles of a liquid that consists almost entirely of acetonitrile. These bottles are supplied with screw. on caps, and these packages could be made child-resistant by substituting a readily available child-resistant closure for the non-child-resistant closures currently supplied. The glue removers should not be adversely affected by the materials that make up the child-resistant closures, and the glue removers should not affect the materials of the child-resistant closures. Since the closure design does not affect the use or storage of these glue removers, the Commission concludes that there are numerous package designs that meet the requirements of 16 CFR 1700.15(b) that are suitable for use with the form of this product.

b. *Practicability.* Because many existing designs suitable for use with the glue removers that are the subject of the proposed regulation are currently being used in the packaging of other products, special packaging for this product seems practicable in that it is adaptable to modern mass production and assembly line techniques. The Commission anticipates no major supply or procurement problems for the packagers of these glue removers or the manufacturers of child-resistant closure and capping equipment. In addition, there should be no serious problems experienced by manufacturers of the products in incorporating the child-resistant packaging features into their existing packaging lines.

c. *Appropriateness.* As shown by the discussion above, and by the use of many existing suitable designs with other products, special packaging is appropriate since it is available in forms that are not detrimental to the integrity of the substance and that do not interfere with its storage or use.

Accordingly, the Commission preliminarily finds that special

packaging for household glue removers containing acetonitrile is technically feasible, practicable, and appropriate.

C. Permanent Wave Neutralizers Containing Bromates

1. Toxicity

[2], except where noted otherwise. The toxic effects of sodium and potassium bromates are similar; however, sodium bromate has been reported to be less toxic than potassium bromate. Based on cases reported in the literature, the possible lethal oral dose of sodium and potassium bromates ranges from 0.005 gram/kg. to 0.05 gram/kg.

The most devastating non-lethal effects of bromate poisoning are on renal function and hearing. Impaired kidney function can progress to complete renal failure requiring dialysis for the remainder of a person's life. Renal failure in young children is associated with decreased body growth, delayed maturation, bone fracture, learning disabilities, and decreased life expectancy. The alternative to chronic dialysis is kidney transplantation, which may be needed more than once. Hearing loss, which can occur as early as the day of ingestion, is irreversible. When impairment occurs early in childhood, the ability to learn to speak, write, and read are severely affected. In a child so compromised, psychological problems can also be expected. Other toxic effects of bromate ingestion include nausea and vomiting accompanied by abdominal pain and diarrhea, anemia, destruction of red blood cells, decreased blood pressure, convulsions, coma, respiratory depression, and possibly death.

During the 1940s and 1950s, when sodium and potassium bromates were commonly used as neutralizers, nine cases of accidental ingestion of neutralizers by children under age five were reported in the medical literature. Because of the severity of the bromate intoxication in these incidents, manufacturers reformulated their products and replaced the bromates with less toxic substances. However, bromates are again being used in some currently-available liquid home permanent wave neutralizer solutions.

The staff has reviewed 17 cases of accidental ingestion of bromate neutralizer solutions by children under age five. One case, which resulted in permanent hearing loss and kidney damage in a 16-month-old child, was reported by the petitioner. Sixteen cases were reported in the literature. There were no cases of accidental ingestion of bromate neutralizer solutions reported in the CPSC CAP data base. Eight of the 17 cases have been reported since 1984. One case was the death of a 17-month-old child who ingested an unknown amount of a potassium bromate neutralizer solution. These incidents underscore the hazard to young children who may be exposed to these products.

The Commission preliminarily concludes that accidental ingestion of bromate neutralizer solutions presents a risk of serious injury, serious illness, or death to young children. Based on the clinical reports reviewed, the lowest doses of the bromates that caused kidney damage and hearing loss were 0.05 gram/kg for potassium bromate and 0.59 gram/kg for sodium bromate. The levels of potassium and sodium bromates at which no effects can be observed are not known. In lieu of such data, the Directorate for Health Sciences reduced the known lowest effect levels of the bromates in humans by a factor of 10 (referred to as an "uncertainty factor") and judged that permanent wave products containing more than 50 mg of potassium bromate or 600 mg of sodium bromate should be subject to child-resistant packaging standards. [5] The Commission solicits comments on whether these are appropriate levels for regulation of permanent wave products containing these bromates.

2. Economic Information

[4] Sodium bromate is used as a laboratory analytical reagent, a food additive, and a maturing agent in flour, and in several industrial processes. Both sodium and potassium bromate were marketed in permanent wave neutralizers in the 1940s and 1950s. Following reports of bromate poisonings involving these products, manufacturers substituted less toxic neutralizing agents, such as perborate and hydrogen peroxide. Recent ingestion incidents involving bromate-containing neutralizers indicate, however, that new products containing bromates have become available. Five different brands of permanent wave neutralizers are implicated in these recent incidents.

Permanent wave products, including those containing bromates, can be purchased at supermarkets, drug stores, and mass merchandise stores. In addition, some beauty supply outlets sell permanent wave kits, labeled "For Professional Use Only", to the general public. Products designed for professional use tend to be stronger and faster acting than products intended for home use. At least three of the ingestion incidents involved "professional use" products.

The home permanent market has a "general" segment that includes all populations and a "targeted" segment that includes ethnic groups. Sales in the general segment amounted to $107.6 million in 1987. Market information on the targeted segment is not available but is believed to be substantially less than the general market segment.

All ingestions of products containing potassium or sodium bromate will require medical treatment, some of which may be prolonged, and bromate poisoning may have both acute and chronic effects. In addition to the immediate costs of hospitalization, medical costs for a bromate victim may include various combinations of auditory assistance, kidney transplantation, and dialysis treatments. Although it is not possible to estimate cost savings of bromate poisonings averted, the relative severity of each case suggests that the savings would be considerable. The Commission preliminarily concludes that bromate ingestions can result in a reduced quality of life and that even one ingestion can result in large total costs to society. The potential benefit to consumers of avoiding accidental ingestions that have severe and permanent consequences probably outweighs the potential costs.

Effective alternative neutralizers—hydrogen peroxide and sodium perborate—are available for both home and professional permanents. A reformulation of neutralizing solutions to safer ingredients by manufacturers that currently use sodium or potassium bromate will cause virtually no major disruption to the industry and may actually result in a net savings due to the cost differential between hydrogen peroxide and the bromates. Requiring the use of child-resistant closures may lead to the use of safer ingredients (to avoid the need for child-resistant closures) or at most increase manufacturers' costs by $.02 per unit.

3. Technical Feasibility, Practicability, and Appropriateness

In issuing a standard for special packaging under the PPPA, the Commission is required by section 3(a)(2) of the PPPA, 15 U.S.C. 1472(a)(2), to find that the special packaging is "technically feasible, practicable, and appropriate."

a. *Technical feasibility.* [7] Home permanent neutralizers containing sodium bromate or potassium bromate are marketed in liquid form. The containers of this product are intended for "one-time use," so that all of the contents of the package is used at once, and there is no need to store leftover neutralizer. The types of packages in which this product is currently sold

include: (1) A plastic bottle with an applicator that cannot be separated from the container and requires the user to cut off the applicator tip to gain access to the solution, (2) a plastic bottle with a non-child-resistant screw-type closure and a separate applicator tip, and (3) a plastic bottle with a flip-up spout in the cap. Design 1 above is already child-resistant. Designs 2 and 3 are readily adaptable to child resistance, either by replacing the present closure with a child-resistant one or by using an outer child-resistant cap. Neither change would affect the use of the product. Therefore, the Commission concludes preliminarily that there are numerous package designs that meet the requirements of 16 CFR 1700.15(b) that are suitable for use with the form of this product.

b. *Practicability.* Because many existing designs suitable for use with these neutralizers that are the subject of the proposed regulation are currently being used in the packaging of other products, special packaging for this product seems practicable in that it is adaptable to modern mass production and assembly line techniques. The Commission anticipates no major supply or procurement problems for the packagers of these neutralizers or the manufacturers of child-resistant closure and capping equipment. In addition, there should be no serious problems experienced by manufacturers of the products in incorporating the child-resistant packaging features into their existing packaging lines.

c. *Appropriateness.* As shown by the discussion above, and by the use of many existing suitable designs with other products, special packaging is appropriate since it is available in forms that are not detrimental to the integrity of the substance and that do not interfere with its storage or use.

Accordingly, the Commission preliminarily finds that special packaging is technically feasible, practicable, and appropriate.

D. Effective Date

The PPPA provides that, except for good cause, no regulation shall take effect sooner than 180 days or later than one year from the date such regulation is issued. Based on all available information, the Commission believes that six months (approximately 180 days) will provide an adequate period of time for manufacturers to obtain suitable child-resistant packaging and incorporate its use into their packaging lines. [9] Therefore, the special packaging requirement is proposed to become effective 180 days after issuance of a final rule and will apply to all products subject to the rule that are packaged after that date.

E. Regulatory Flexibility Act Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 et seq.) generally requires the agency to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. The purpose of the Regulatory Flexibility Act, as stated in section 2(b) (5 U.S.C. 602 note), is to require agencies, consistent with their objectives, to fit the requirements of regulations to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulations. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Commission's Directorate for Economics has prepared an Initial Regulatory Flexibility Act Analysis to examine the effect of the proposed rule on small entities. [9] The findings of that analysis are repeated below.

The requirements of the proposed rule have been explained previously. There appear to be no reasonable alternatives to the proposal to require PPPA reqirements for glue removers containing acetonitrile and home permanent wave neutralizers containing sodium or potassium bromates that would adequately reduce the risk of serious personal illness or serious illness to children.

Costs to manufacturers of glue removers containing acetonitrile who do not reformulate their products to use substitute chemicals may increase by two to seven cents per child-resistant closure. On an annual basis, this may amount to $15,000 for glue removers used for cosmetic purposes and $35,000 for glue removers used by hobbyists. Some informed sources believe that substitute chemicals may cost even less than acetonitrile. During the last few months, at least one manufacturer of a glue remover for cosmetic purposes has voluntarily reformulated from acetonitrile to a safer substitute chemical with no increase in retail price.

According to available information, about 93% of the marketers of home permanent wave neutralizers targeted to the general population do not use bromates. Definitive market information on products targeted to ethnic markets was unavailable, but a brief market survey revealed that products with and without bromates are available for sale. Costs to manufacturers of home permanent wave neutralizers who continue to use either sodium or potassium bromate may increase by two cents per child-resistant closure.

In addition, based on previous experience with products requiring child-resistant packaging, the Commission believes an effective date of 18 days from the date the regulation is issued will provide an adequate period of time for manufacturers who do not choose to reformulate their products to obtain suitable child-resistant packaging and incorporate its use into their packaging lines.

For the reasons mentioned above, the Consumer Product Safety Commission concludes that the proposal to require special packaging for household glue removers containing acetonitrile and for home permanent neutralizers containing sodium bromate or potassium bromate, if issued, will not have any significant economic effect on a substantial number of small entities.

F. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commision has assessed the possible environmental effects associated with Poison Prevention Packaging Act (PPPA) packaging requirements for glue removers containing acetonitrile and permanent wave neutralizers containing bromates.

The Commission's regulations, at 16 CFR 1021.5(c)(3) state that rules requiring special packaging for consumer products normally have little or no potential for affecting the human environment. Analysis of the impact of this proposed rule indicates that child-resistant packaging requirements for these consumer products containing acetonitrile or either sodium or potassium bromates will have no significant effects on the environment. This is because manufacturers of affected products either will replace present closures with a child-resistant closure or will use substitute chemicals. If child-resistant packaging is used, non-child-resistant closure inventories will be depleted by the time the rule becomes effective and will not need to be disposed of in bulk. The rule will not significantly increase the number of child-resistant closures in use, and, in any event, the manufacture, use, and disposal of the child-resistant closures present the same potential

environmental effects as do the currently used non-child-resistant closures. If products are reformulated, the market for the bromates and acetonitrile will not be materially affected because there is a ready market for these chemicals that would be unaffected by the rule proposed below. Moreover, the available chemical substitutes have no known adverse effects on the environment. Therefore, because this proposed rule has no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 16 CFR Part 1700

Consumer protection, Drug, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

G. Conclusion

For the reasons given above, the Commission proposes to amend 16 CFR part 1700 as follows:

PART 1700—[AMENDED]

1. The authority citation for part 1700 continues to read as follows:

Authority: Pub. L. 91–601, secs. 1–9, 84 Stat. 1670–74, 15 U.S.C. 1471–76. Secs 1700.1 and 1700.14 also issued under Pub. L. 92–573, sect. 30(a), 88 Stat. 1231.15 U.S.C. 2079(a).

2. Section 1700.14 is amended by adding new paragraphs (a)(18) and (a)(19), reading as follows (although unchanged, the introductory text of paragraph (a) is included below for context):

§ 1700.14 Substances requiring special packaging.

(a) *Substances.* The Commission has determined that the degree or nature of the hazard to children in the availability of the following substances, by reason of their packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances, and the special packaging herein required is technically feasible, practicable, and appropriate for these substances:

* * * * *

(18) *Glue removers containing acetonitrile.* Household glue removers in a liquid form containing more than 500 mg of acetonitrile in a single container.

(19) *Permanent wave neutralizers containing sodium bromate or potassium bromate.* Home permanent wave neutralizers, in a liquid form, containing in single container more than 600 mg of sodium bromate or more than 50 mg of potassium bromate.

* * * * *

Dated: January 2, 1990.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Appendix 1—List of References

(This Appendix will not be printed in the Code of Federal Regulations.)

1. Petition (PP 88–2) from American Association of Poison Control Centers, dated June 27, 1988.
2. Memorandum from CPSC's Directorate for Health Sciences, dated December 5, 1988.
3. Letter from the Cosmetic, Toiletry and Fragrance Association, dated January 25, 1989.
4. Memorandum from CPSC's Directorate for Economic Analysis, dated March 24, 1989.
5. Memorandum from CPSC's Directorate for Health Sciences, dated July 24, 1989.
6. Letter from Department of California Health Services, dated August 3, 1989.
7. Memorandum from CPSC's Directorate for Economic Analysis, dated August 23, 1989.
8. Memorandum from CPSC's Directorate for Economic Analysis, dated October 12, 1989.
9. Memorandum from CPSC's Directorate for Economic Analysis, dated October 23, 1989.
10. Memorandum from CPSC's Office of Program Management and Budget, dated December 11, 1989, with attached briefing package.
11. In-Depth Investigations:
    a. 880929HCC2014
    b. 880929HBC3017
    c. 880929HBC3018
    d. 881201HBC3059
    e. 890517HCC1315
12. Memorandum to the Commission from the Office of the General Counsel, with substitute page for **Federal Register** notice, dated December 22, 1989.

[FR Doc. 90–409 Filed 1–12–90; 8:45 am]

BILLING CODE 6355–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239, 270, 274

[Release No. 33–6850; IC–17294; S7–1–90]

RIN 3235–AD81

Disclosure and Analysis of Mutual Fund Performance Information; Portfolio Manager Disclosure

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule and form amendments.

SUMMARY: The Commission is proposing for comment two alternative amendments to Form N–1A, the registration form used by open-end management investment companies ("mutual funds") under the Investment Company Act of 1940 and the Securities Act of 1933, to provide investors with new easily understandable information about mutual fund performance in prospectuses or annual reports to shareholders. The first proposal would require management to discuss and analyze the mutual fund's performance during its previous fiscal year and the techniques used to achieve that performance in light of the fund's objectives. The second alternative proposal would require a comparison of fund performance over certain time periods to the performance of an appropriate securities index over the same periods. In addition, the Commission is proposing amendments that would (1) revise the condensed financial information contained in the Form N–1A prospectus; (2) require disclosure about portfolio managers by mutual funds; (3) make corresponding amendments to Form N–14 under the Securities Act of 1933; and (4) amend related rules.

DATE: Comments on the proposed rule and form amendments should be received on or before March 12, 1990.

ADDRESSES: Comment letters should refer to File S7–1–90 and be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. All comments received will be available for public inspection and copying in the Commission's Public Reference Room 450 5th Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Larisa Dobriansky, Special Counsel, or Robert E. Plaze, Chief of Office (202) 272–2107, Office of Disclosure and Adviser Regulation, Division of Investment Management, 450 5th Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today is proposing for comment:

(1) Amendments to Form N–1A [17 CFR 274.11A], the registration form used by open-end management investment companies ("funds" or "mutual funds") to register under the Investment Company Act of 1940 [15 U.S.C. 80a *et seq.*] ("1940 Act") and to register their securities under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] ("1933 Act"). Two alternative proposals would require disclosure about fund performance in the prospectus or the annual report to shareholders: (i) Proposed new Item 5A would call for management's discussion and analysis of the fund's performance during the previous year ("Alternative I"); (ii) Proposed new Item 3A would require a

comparison of the fund's performance over specified periods to that of an appropriate securities index over the same periods, along with a more limited narrative disclosure requirement ("Alternative II"). Other proposed amendments would (A) revise substantially the condensed financial information contained in the prospectus; (B) require disclosure about all persons who significantly contribute to the investment advice relied on by the fund (*e.g.*, portfolio managers), and (C) permit automatic incorporation by reference into the registration statement of information contained in annual reports to shareholders.

(2) Amendment of rule 485(b) [17 CFR 230.485(b)] of Regulation C under the 1933 Act [17 CFR 230.400 *et seq.*] to include among the class of post-effective amendments eligible to become effective immediately upon filing, those filed for the purposes of including or updating the specified information about investment performance required by the proposed alternative amendments.

(3) Amendment of rule 34b–1 under the 1940 Act [17 CFR 270.34b–1] to include performance information (such as that which would be required by proposed Alternative II) in periodic reports to shareholders from the rule's updating requirements.

(4) Amendment of rules 31a–1 and 31a–2 under the 1940 Act [17 CFR 270.31a–1, 31A–2] to require funds to retain specified records relating to the index comparison that would be required by proposed Alternative II.

(5) Conforming amendments to Form N–14 [17 CFR 239.23] to reflect the proposed new disclosure items in Form N–1A.

I. Background and Summary of Proposed Amendments

The Commission is proposing to amend the disclosure requirements for mutual funds. The proposals include (i) alternative amendments for providing investors information about the investment results achieved by funds; (ii) required disclosure about persons who significantly contribute to the investment advice relied on by funds; and (iii) revisions to shorten and simplify the per share table contained in the prospectus. The revised disclosure requirements are intended to provide investors with more information about the performance of the fund and individuals who may be primarily responsible for that performance.

The proposed amendments are a continuation of the Commission's efforts to provide mutual fund investors with material information about funds in a format that is comprehensive and which permits comparisons to be made among funds. In 1989 the Commission amended Form N–1A to require a fee table in the front part of mutual fund prospectuses.[1] The table consolidates, in a single location in the prospectus, fund expense information and require the fund to provide an example of the cumulative amount of these expenses over different investment periods to facilitate a comparison of expenses among funds.[2] Also in 1988, the Commission adopted rules and rule amendments to require uniformly-computed performance information in mutual fund advertisements and sales literature containing performance information.[3] The advertising rules were designed to prevent misleading performance claims by funds and to permit investors to make meaningful comparisons among fund performance claims. These rules did not, however, require the inclusion of any performance information in advertisements or sales literature, nor did they require that performance information be in mutual fund prospectuses. Under current prospectus disclosure requirements, performance data must be derived from the financial information set forth in the per share table.

The proposed alternative amendments to Form N–1A address the Commission's concern that current disclosure requirements may not provide investors with sufficient information to evaluate easily investment results achieved by mutual funds, or to relate those results to the fund's investment objective.[4] However, the two proposals represent different approaches to providing this information. Alternative I would require management to discuss and analyze the fund's fiscal year performance in relation to its investment objectives. Management would be required to evaluate the strategies and techniques used to pursue these objectives and their effects on investment results. At present, while prospectuses state fund objectives and generally specify strategies and techniques that fund advisers may employ, there is no requirement for funds to analyze the extent to which they achieved their objectives or to describe the results of investment strategies actually used.

Alternative II would rely primarily on an objective presentation of performance information. A fund would be required to compare its total returns over one, five, and ten year periods to the performance of an appropriate securities index over the same periods. This approach would provide investors with information on the fund's historic performance compared to that of "the market."

The disclosure requirements under each proposal could be satisfied by including the information either in the prospectus or annual report to shareholders. Both proposals would require narrative disclosure about the impact on a fund and its shareholders of policies and practices that funds may use to maintain a certain level of distributions.

The Commission, in addition, is proposing two revisions to Form N–1A that were recently proposed for closed-end management investment companies ("closed-end funds").[5] One change would provide for a shortened and simplified per share table which would include a new line item setting forth the fund's total return for each of the last ten fiscal years of the fund. The other change would require that mutual fund prospectuses contain certain disclosures about persons who make significant contributions to the investment advice relied on by the fund. This requirement would provide investors with information about any individual who is responsible for fund performance reported in the per share table and evaluated in the text of the prospectus.

II. Discussion of the Proposed Amendments

A. Condensed Financial Information

The Commission proposes to revise the per share table contained in mutual fund prospectuses. The revisions, which are substantially the same as those recently proposed for closed-end fund prospectuses, would shorten and simplify the table.[6] The per share table

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[1] Investment Company Act Rel. No. 16244 (Feb. 1, 1988) [53 FR 3192 (Feb. 4, 1988)].

[2] *Id.*

[3] Investment Company Act Rel. No. 16245 (Feb. 2, 1988) [53 FR 3868 (Feb. 10, 1988)]. Among other things, the amendments permitted fund advertisements to quote a uniformly calculated yield, tax equivalent yield, and total return, as well as to quote performance by non-standardized total return quotations provided that any yield or non-standardized total return quotation is accompanied by uniformly calculated one year, five year, and ten year average total return quotations.

[4] At lease one member of the mutual fund industry has called upon the Commission to mandate disclosure concerning fund performance. *See* Bogle, "Performance-Reporting Challenge for Mutual Funds," remarks before a conference sponsored by the Financial Analysts Federation and the Institute of Chartered Financial Analysts (Jan. 24, Feb. 28, 1989).

[5] Investment Company Act Rel. No. 17091 (July 28, 1989) (File No. S7–21–89) [54 FR 32993 (Aug. 11, 1989)] ("Release 17091").

[6] *Id.* The proposed revisions, if adopted, would provide for a per share table identical to the one proposed for closed-end funds in all respects except

Continued

would be reduced from thirteen to nine items of information.[7] Some items would be deleted, others added, and the captions of some rephrased for greater clarity.[8]

Among the items proposed to be added would be the fund's total return, which would be presented, like the other information in the table, for each of the last ten fiscal years of the fund. Currently, investors must analyze changes in net asset value and distributions to estimate total return of a fund. The new Item would provide investors with material information about past performance to consider before investing in a fund.[9]

B. Proposed Disclosure Requirements Concerning Investment Performance

1. Alternative I

As Alternative I, the Commission is proposing a new Item 5A of Form N–1A to require that prospectuses include a separate discussion and analysis by management of the mutual fund's investment performance ("management's discussion and analysis" or "MD&A"). Proposed Alternative I is grounded conceptually on the disclosure requirement for operating companies subject to the registration or periodic reporting requirements of the federal securities laws.[10]

The MD&A disclosure requirement for operating companies is set out in Item 303 of Regulation S–K [17 CFR 229.303]. Item 303 requires a discussion of an operating company's liquidity, capital resources, results of operations, and other information necessary to an understanding of a company's financial condition, changes in financial condition and results of operations. The item requires the management of an operating company to "identify and address those key variables and other qualitative and quantitative factors which are peculiar to and necessary for an understanding and evaluation of the individual." [11] The MD&A provides a narrative discussion of the financial statements of the company and affords security holders an opportunity to look at a company "through the eyes of management." [12]

The shareholders of most mutual funds have not had the benefit of a narrative discussion of fund investment results. Fund prospectuses provide statements of investment objectives, often described in aspirational terms, such as "highest yield possible consistent with capital preservation," or "maximum total return through investment in medium to small companies judged by the adviser to be excellent prospects." They are not required by Form N–1A to include a discussion of the extent to which the fund has achieved those objectives over a specified period or to describe or anaylze the strategies and policies employed during that period in pursuit of those objectives, although some funds voluntarily provide this disclosure in their annual reports. To determine the past performance of the fund, an investor must analyze the fund's per share table or financial statements. However, this is not an adequate substitute for an analysis by fund management designed to help investors understand the investment results of the fund or the extent to which the fund, during a given period, achieved its investment objectives. This is because the per share table only explains "what happened" and not "why it happened."

The MD&A requirement of proposed Item 5A is specifically tailored to mutual funds and differs in two significant respects from Item 303. First, Item 303 calls for a discussion of known trends, demands, commitments, events or uncertainties that are reasonably likely to have a material impact on future operations. The Item encourages the disclosure of other forward-looking information. Proposed Item 5A is designed to assist investors in evaluating the past performance of the fund, thereby providing a basis for assessing the quality of the fund's portfolio management.[13] The Item also is designed to help investors understand the nature of the investment strategies being used. Second, the analysis called for is not of the financial statements but of the performance of the fund, which could be measured in terms such as total return and yield of the fund. These are concepts most often used to evaluate funds and are more commonly understood by investors.

As with Item 303, the disclosure requirements of proposed Item 5A under Alternative I are intentionally general, and reflect the Commission's view that a flexibile approach will elicit more meaningful disclosure and avoid "boilerplate" discussions. Proposed Item 5A would consist of two separate but interrelated disclosure requirements. Funds would be expected to respond to the Item in a separate section of the prospect (or annual report to shareholders), but would not ordinarily be expected to respond to the sub-items separately.

Proposed Item 5A is fashioned as a "management's" discussion and analysis of investment performance. The board of directors is usually not involved in the day-to-day management of fund operations. Unlike operating companies, most funds are externally managed by investment advisers who are delegated responsibility for drafting the fund's disclosure documents. Nonetheless, the board of directors of the fund would bear the ultimate responsibility for the MD&A, like all other parts of the prospectus. The MD&A required by Item 5A would not have to be specifically mentioned in the scope paragraph of the audit report, although the auditors of the fund would have the same responsibility for it as they do for all other financial information in the prospectus.

(a) *Item 5A(a).* Paragraph (a) would require a discussion of the fund's performance during its most recently completed fiscal year in relation to its investment objectives. This paragraph would require a fund to (i) identify those factors that materially affected performance (*e.g.*, interest rates, exchange rates, general market trends); (ii) identify and evaluate the effectiveness of the strategies and techniques used by the fund's investment adviser in pursuing the investment objectives (*e.g.*, extending average maturities, taking a defensive position); and (iii) describe any material effects that those techniques and strategies had on the total return of the fund during the period.

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one, the calculation of total return. As explained in Release 17091 at note 44, closed-end fund total return would take into consideration the market price of fund shares which typically differs from the per share net asset value of fund shares. As proposed, mutual fund total return would be based on per share net asset values.

[7] The Commission also is proposing to delete Instruction number 8 to Item 3(a) of Form N–1A so that capital gains distributions are treated in the same manner for purposes of the per share table as they are for purposes of fund financial statements.

[8] The details of these revisions are explained in Release 17091 *supra* note 5 at section III.B.

[9] Several commenters on the advertising rules suggested including total return in fund prospectuses, in lieu of adopting the advertising rules. *See Summary of Comments on Mutual Fund Advertising Proposal* (March 31, 1987) in File No. S7–23–86.

[10] *See* sections 5 and 7 of the 1933 Act [15 U.S.C. 77e, 77g] and sections 13(a) and 15(d) of the Securities Exchange Act of 1934 ("1934 Act") [15 U.S.C. 78m(a), 78o(d)].

[11] Securities Act Rel. No. 6835 (May 18, 1989) [54 FR 22427 (May 24, 1989)] (citing Securities Act Rel. No. 6349 (Sept. 28, 1981), 23 SEC Docket 964 [not published in the **Federal Register**]).

[12] Securities Act Rel. No. 6711 (Apr. 17, 1987) [52 FR 13717 (Apr. 24, 1987)].

[13] Forward-looking information of mutual funds is not covered by rule 175 [17 CFR 230.175], the safe harbor for projections, because forecasts of the securities markets may pose a significant risk of misleading investors and can quickly become stale.

Instructions 1 and 2 to proposed Item 5A are designed to provide a fund with guidance in responding to this Item. Instruction 1 requires the fund to use an approach that will enable investors to understand how the fund has achieved the investment results of the recent period. Proposed Instruction 2 suggests the types of factors, strategies, and techniques that might be discussed in response to the Item.[14] In evaluating the success of the fund in achieving its investment objectives, the fund is not limited in the types of performance measurements it may use. Thus a fund whose investment objective is obtaining income could discuss performance in terms of yield.

Paragraph (a) also would require an evaluation of the fund's strategies in terms of their impact on its total return. Like the per share table, this Item would require total return to be considered even if the fund does not have total return as an investment objective. If the fund sacrificed total return in order to achieve its investment objective of current income, it would explain the sacrifice in response to this Item. The proposed Item would require an analysis of only the most recent fiscal year. However, investors could consult the per share table for information about longer term performance. Comment is requested as to whether a longer period should be required or, alternatively, whether year-to-year comparisons, such as those required to be made in response to Item 303 of Regulation S–K, would be useful.[15]

(b) *Item 5A(b).* Paragraph (b) of proposed Item 5A would require a fund that has a formal or informal policy of maintaining a specified level of distributions to its shareholders to disclose, in addition to the information called for by paragraph (a), what impact that policy has had on the fund's investment strategies and per share net asset values during the last fiscal year. These policies often result in the realization of capital gains and losses, the return of principal to the investor, and short-term investing at the expense of longer term investment goals.

For example, many of the so-called "government plus" funds invest in government securities and write call options on those securities in order to fund distributions in excess of the portfolio's yield. The dividend income from the government securities together with the option premiums are distributed to shareholders at a level that is in excess of that which could be maintained based on the income from the government securities.[16] While this strategy provides current revenues, it precludes the fund from obtaining the benefit of the appreciation of the securities on which options are written and can result in the fund having a lower return. Although this strategy and the risks inherent in it must be described in the prospectus, investors may not appreciate the extent to which the strategies used to maintain a level of distributions affect the value of their investments. This is particularly true where a fund, to maintain a certain level of distributions, chooses to return capital to its shareholders.

To the extent that these strategies have resulted in lower total return, losses to the fund, or a return of capital, a discussion of the effects would be required in response to paragraph (a) of the proposed Item. Paragraph (b) of proposed Item 5A would require these funds to focus on the impact the distribution policy has had during the last fiscal year on the investment strategies in which the fund engaged and on the per share net asset value of the fund. The Commission believes that this disclosure may make the current risk disclosure in the prospects more meaningful to investors by relating it to the experience of the fund during the past fiscal year, thereby allowing investors to know, before investing, how the fund is maintaining its distribution rate.[17]

2. Alternative II

As Alternative II, the Commission is proposing a new Item 3A of Form N–1A to require a fund to compare in the prospectus, or alternatively in the annual report to shareholders, its total returns over one, five, and ten year periods to the performance of an appropriate securities index over the same periods. The purpose of this requirement is to provide investors with an objective standard against which they can compare the performance of the fund. In addition, it would give investors the opportunity to consider the fund's historic performance compared to that of "the market." As in the case of the proposed MD&A item, the disclosure required by this alternative would not have to be specifically referenced in the scope paragraph of the audit report, although the auditors of the fund would have the same responsibility for it as they do for all other financial information in the prospectus.

Comparison with the performance of a securities index is a widely used method of analyzing the performance of a mutual fund. Some advisers compensate their portfolio managers, in part, based on the extent to which the fund's performance exceeds that of an index. Many prospectuses, annual reports to shareholders, pieces of sales literature, and some advertisements use tables and graphs comparing the performance of the fund with that of a securities index.

Proposed Item 3A reflects the common disclosure practice of comparing fund performance to an index, but would require this disclosure by all funds over uniform and therefore comparable time periods. These time periods, the most recent one, five, and ten year periods, correspond to those time periods for which funds advertising performance are required to show their average annual total returns,[18] and are intended to present past performance over a short, intermediate, and long period. Funds would be required to present the specified total returns in a manner that could be readily understood by investors (*i.e.*, a graph, chart or appropriate tabular format).[19] Unlike the advertising rules, proposed Item 3A would permit use of either an average annual or an aggregate total return figure.[20] Comment is requested as to whether one method of calculating total return should be specified to allow for greater comparability. Comment also is requested on whether different time periods should be required.

As an alternative, the Commission requests comment on whether the index comparison should be made by adding a line to the per share table showing the return on the index during each of the

[14] The factors, techniques and strategies listed in the instruction include: developments in the markets in which the portfolio securities traded, composition of the fund's portfolio (*e.g.*, types of issuers, types of securities, quality of portfolio securities, etc.), net asset value of the fund, expense ratio, portfolio turnover, sales and redemption trends, currency fluctuations, hedging transactions, and whether the fund assumed a temporary defensive position.

[15] *See* Instruction 1 to Item 303(a) [17 CFR 229.303(a)].

[16] Prior to the adoption of the mutual fund advertising rules in 1988, these funds commonly advertised a "distribution rate." The rates these funds advertised were substantially higher than prevailing yields on government securities because they included capital gains. Because of investor confusion regarding the components of a distribution rate, the Commission precluded funds from advertising distribution rates, and permitted them to be included in sales literature only when accompanied by a uniformly-computed yield and total return and sufficient disclosure to inform investors of the difference between a yield and a distribution rate. *See* Release 16245 at section II.5., *supra* note 3.

[17] Section 19(a) of the 1940 Act [15 U.S.C. 80a-19(a)] requires a written statement describing the source of a distribution to accompany any payment in the nature of a dividend if the source is other than net income.

[18] Rule 482(e) [17 CFR 230.482(e)(3)].

[19] Instruction 1 to proposed Item 3A.

[20] Instruction 3 to proposed Item 3A.

past ten fiscal years.[21] This approach would have the advantage of placing all of the performance information in one place in the prospectus, the per share table, but would be less convenient for the fund to explain, if it wished, the basis for its performance vis-a-vis the index. Moreover, funds would not be able to respond to this requirement by presenting the types of charts and graphs that many funds currently use to illustrate their performance. Finally, because sales loads and account fees are not reflected in the total return figures that would be included in the per share table, they would not be reflected in the comparison.

Under Alternative II, a fund would be required to compare its performance to an "appropriate securities index." The concept of an "appropriate securities index" is taken from section 205(b)(2) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–205(b)(2)], which limits a performance-based fee paid to an adviser of a fund to one based on the performance of a fund relative to an "appropriate securities index." This would give a fund a considerable degree of flexibility to select an index that it believes best reflects the markets in which the fund invests. In some cases, of course, there will not be an index available that encompasses the types of securities in which the fund invests. Nonetheless, a broad market index could always be used to serve as a benchmark for how an alternative, unmanaged investment in the securities market performed during the period.[22] Comment is requested as to whether the Commission should provide further guidance on what would constitute an "appropriate securities index" or, conversely, an inappropriate securities index for purposes of the proposed new item, and if so, what the standards should be.

Instruction 2 to proposed Item 3A limits the use of an "appropriate securities index" to one that is created and administered by an organization that is not an affiliated person of the fund, its adviser, or principal underwriter to avoid the conflict of interest that would occur if a fund were to create and administer an index against which to measure its own performance.[23] An exception is provided for those indexes that are widely recognized and used, since the potential for conflict is mitigated by the fact that the index is used for multiple purposes and not only to compare performance of the fund.

Funds would be able to change indexes from time to time, but would be required by Item 3A to explain the reasons for the change and to include the previously used index comparison for a period of one year. This is designed to give funds some flexibility to change indexes as new indexes are developed or the nature of the fund's investment objectives or policies change, but to minimize the possibility that a fund will change indexes solely because the fund begins to perform poorly compared to one index and favorably when compared to another.

The securities index used must reflect the reinvestment of dividends, but must not be adjusted for any fund expenses.[24] Costs associated with an investment in a fund, such as advisory fees, sales loads, and brokerage, are costs of investing in a professionally managed portfolio.[25] Therefore, they must be overcome before a fund can be said to have "beaten" the market.[26] To the extent that fund performance is reduced by these expenses, a fund would have the opportunity to explain this to investors.

The proposed item would only permit money market funds to use an index consisting of the securities of other mutual funds, *i.e.*, a peer group of mutual funds.[27] Use of a peer group index by other types of funds would not necessarily show how a fund's performance compared to the market if the peer group as a whole performs poorly. Comment is requested as to whether such a peer group index should be permitted to satisfy the requirements of proposed Item 3A for non-money market funds, or whether such an index should be used by these funds only in addition to a more traditional securities market index. Funds would be limited by Item 3A to using a securities index. Comment is requested as to whether the Item should permit the use of indexes not tied to the securities markets, such as a consumer price index.

Studies have asserted that funds with more volatile, riskier portfolios obtain, on average, higher returns than those with less risky portfolios because higher risk securities tend to have higher returns to compensate investors for assuming greater risk.[28] Thus a favorable comparison between a fund and an index may simply reflect the riskier portfolio rather than superior portfolio management. Several scholars have asserted that fund management is most appropriately evaluated by measuring return in light of the risks assumed to obtain the return.[29] Comment is requested on whether funds should be required to adjust their performance to reflect the riskiness (*i.e.*, "beta") of their portfolios.[30]

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[21] As proposed to be revised, the per share table would include a line item that would indicate the fund's total return for each of the last ten fiscal years. *See* section II.A. *supra*.

[22] Money market funds eligible to quote a seven-day yield under Item 22 of Form N–1A would be required to compare their yield(s) to an appropriate index of yields.

[23] The term "affiliated person" is defined in section 2(a)(3) of the 1940 Act [15 U.S.C. 80a–2(a)(3)].

[24] Instruction 2 to proposed Item 3A.

[25] A comparison of both the performance of the fund and the index assumes portfolios that have been assembled before beginning the measuring periods, and thus need not take into account acquisition costs. In the case of the index, the portfolio is not managed and there are no subsequent transaction costs. However, an actively managed portfolio will have transaction and other costs, including advisory fees, which must be appropriately reflected in performance.

[26] An index adjusted for such fees and expenses would not be an objectively maintained benchmark and would penalize low cost funds vis-a-vis high cost funds.

[27] *See supra* note 22.

[28] Sharpe, *Risk Aversion in the Stock Market: Some Empirical Evidence*, 20 Journal of Finance 416 (Sept. 1965); Sharpe, *Mutual Fund Performance*, 39 Journal of Business 119 (Jan. 1966); McDonald, *Objectives and Performance of Mutual Funds* (1960–1969), 9 Journal of Financial and Quantitative Analysis 311 (June 1974); Modigliani and Pogue, *An Introduction to Risk and Return*, 30 Financial Analysts Journal 68 (March/April), 69 (May/June 1974); R. Brealey, *An Introduction to Risk and Return From Common Stocks*, Chapt. 4 (1969). These findings have been reexamined recently using the methodology developed to evaluate a manager's ability to time the market and select individual securities. Henriksson and Merton, *On Market Timing and Investment Performance. II. Statistical Procedures for Evaluating Forecasting Skills*, 54 Journal of Business 513 (Oct. 1981). The recent studies found no significant differences with the general findings of the earlier studies. Chang and Lewellen, *Market Timing and Mutual Fund Investment Performance*, 57 Journal of Business 57 (Jan. 1984); Henriksson, *Market Timing and Mutual Fund Performance: An Empirical Investigation*, 57 Journal of Business 73 (Jan. 1984); Jagannathan and Korajczyk, *Assessing the Market Timing Performance of Managed Portfolios*, 59 Journal of Business 217 (April 1986).

[29] Treynor, *How to Rate Management of Investment Funds*, 43 Harv. Bus. Rev. 63 (Jan.–Feb. 1965); Jensen, *Risk, the Pricing of Capital Assets, and the Evaluation of Investment Portfolios*, 42 Journal of Business 167 (April 1969); Mains, *Risk, the Pricing of Capital Assets, and the Evaluation of Investment Portfolios: Comment*, 50 Journal of Business 371 (July 1977). *See also* Bank Administration Institute, *Measuring the Investment Performance of Pension Funds For the Purpose of Inter-Fund Comparisons* 6 (1968): "A superior fund manager is one who obtains on the average a high rate of return relative to the degree of risk he has assumed, or is permitted by policy to assume, in his investments."

[30] Comment on similar issues was requested by the Commission in connection with the proposal of the mutual fund advertising rules. *See* Investment Company Act Rel. No. 15315 (Sept. 17, 1986) [51 FR 34390 (Sept. 26, 1986)] at Section III.

In addition to requiring an index comparison, proposed Item 3A would call for the same information required by proposed Item 5A(b). Therefore, a fund with a formal or informal policy of maintaining a specified level of distributions to its shareholders would have to discuss the effect that policy has had on the fund's investment strategies and per share net asset values during its last fiscal year.

3. Procedural Requirements

(a) *Annual Report to Shareholders.* As noted earlier, the disclosure requirements under either of the alternative proposals could be satisfied by including the specified information in the annual report to shareholders instead of in the prospectus. Those funds that currently prepare an analysis of fund performance usually include it in their annual reports. The Commission's proposed alternative amendments would accommodate this practice; as a result, some funds may only have to make minor revisions to their annual reports to comply with the respective proposed form amendments, if adopted.

To place the specified information in the annual report instead of the prospectus, a fund would have to meet three conditions under either proposal.[31] First, a copy of the annual report must either precede or accompany delivery of the prospectus. Second, the required disclosures must be incorporated by reference into the prospectus so that prospectus liability attaches to that information regardless of the document in which it is delivered. Third, the specified performance information must be filed with the Commission as an exhibit to the registration statement to facilitate examination of the disclosures by the Commission staff reviewing the prospectus.

The Commission also requests comment on alternative means of using annual reports to satisfy these disclosure requirements. Under this alternative, funds would be required to include the new disclosure in their prospectuses unless it appears in their annual reports. However, funds including this information in their annual reports would not be required to incorporate the material by reference into the prospectuses or deliver the annual report to prospective investors. Rather, the prospectus would be required to include a statement that the annual report contains an explanation of the fund's performance during its most recent fiscal year, and that it is available upon request.

(b) *New Funds.* Respective instructions to the proposed alternative amendments specify certain requirements for new funds.[32] A new fund would have to include the disclosures required under the alternative proposals in the first form of prospectus used after the end of its first fiscal year, if that prospectus (or the related Statement of Additional Information) contains audited financial information for a period of at least six months. If that prospectus does not contain financial statements for at least a six month period, the specified information would not be required to be included until the first form of prospectus used after the end of the fund's second fiscal year. Thus, the proposed disclosures would only be required in a prospectus after a sufficient period of operations has occurred to permit a meaningful discussion and analysis (or index comparison). Secondly, the instructions would facilitate the use of annual reports as the means of presenting the required information. A new fund that wished to include the specified performance information in its annual report would not have to first include the information in its prospectus and then wait until its next annual report to move it to the annual report. Comment is requested on whether a new fund that would be required to include the information into its prospectus only after the end of its second fiscal year should be required to do so earlier.

(c) *Proposed Amendments to Rule 485.* Mutual funds update their prospectuses annually by means of post effective-amendments to their registration statements. Under rule 485(b) [17 CFR 230.485(b)] post-effective amendments that contain only routine updating changes become effective automatically and without staff review. Under rule 485(a) [17 CFR 230.485(a)] all other post-effective amendments become effective sixty days after filing or, at the option of the fund, up to eighty days after filing. During this period the Commission staff has an opportunity to review and comment on the filings.

Under either alternative, the Commission would amend rule 485 so that post-effective amendments that are currently eligible to be filed under paragraph (b) will continue to be so eligible notwithstanding the inclusion of information concerning investment performance required by the alternative proposals. The Commission contemplates that the staff will review those disclosures on a spot-check basis in order to assess the development and adequacy of disclosure practices. However, post-effective amendments containing disclosures required by the alternative proposals that are filed under paragraph (a) for purposes other than those specified in paragraph (b) would continue to be reviewed as part of the normal review of post-effective amendments.

(d) *Sales Literature.* Rule 34b–1 under the 1940 Act requires that sales literature containing performance information include the same uniformly-computed performance information that rule 482 under the 1933 Act [17 CFR 230.482] requires to be disclosed in mutual fund advertisements.[33] Rule 34b–1 contains an exception for reports to shareholders, including annual reports, that contain performance data covering only the period of the report. Responses to proposed Item 3A (Alternative II) would, of course, involve performance data covering periods in excess of the period covered in the annual report. Under the current rule, if a fund were to include performance information, such as the data required by Alternative II, in its annual report to shareholders, it would be required: (i) Either to make the index comparison called for by proposed Item 3A by using average annual total return figures or by using aggregate total return figures accompanied by average annual total return figures; (ii) to include the legend required by paragraph (a)(6) of rule 482; [34] and (iii) to update the information quarterly.[35]

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[31] *See* proposed amendment to General Instruction E of Form N–1A in Section II.B.3.(g). *infra.*

[32] Instruction 5 to proposed Item 3A; Instruction 3 to proposed Item 5A.

[33] Rule 34b–1 provides that sales literature containing any performance information (except that of a money market fund) must contain uniformly-computed average annual total return for one, five, and ten year periods; sales literature containing yield (or some other quotation of income or distributions) must contain a uniformly-computed yield figure; and sales literature containing a tax equivalent yield (or some other quotation of tax equivalent income or distributions) must contain a uniformly-computed tax equivalent yield figure.

[34] Paragraph (a)(6) of rule 482 requires a fund to disclose that the performance data quoted represents past performance and that the investment return and principal value of an investment will fluctuate so that an investor's shares, when redeemed, may be worth more or less than their original cost. Money market funds may omit information about principal fluctuation.

[35] Rule 34b–1(a) requires that the uniformly-computed total return information required to be included in sales literature be the total return information specified in paragraph (e)(3) of rule 482. Subparagraph (e)(3)(ii) of rule 482 requires that the total return be current as to the most recent calendar quarter prior to submission for publication. The note to rule 34b–1 provides that the currentness provisions of rule 482, paragraph (f), also apply to

Continued

The Commission is proposing to amend rule 34b–1 to exempt from the updating requirements performance information (such as that required by Alternative II) contained in any periodic report to shareholders. This revision would avoid application of a different updating requirement to performance information included in annual reports from the one applied to such information in prospectuses. In addition, this exception from the updating requirement may be warranted because investors are likely to understand that the performance information in a periodic report is only as current as the report.[36]

(e) *Recordkeeping.* In connection with Alternative II, the Commission is proposing an amendment to rules 31a–1 and 31a–2 under the 1940 Act [17 CFR 240.31a–1 and 31a–2], the investment company recordkeeping rules, to require that funds preserve for Commission inspection worksheets used to compile the data necessary to compare fund total return to a securities index in response to proposed Item 3A. This would facilitate Commission staff review of the integrity of the data in the prospectus in the course of a fund inspection.

(f) *Amendment to Form N–14.* Form N–14 is the registration form used by investment companies to register under the 1933 Act securities to be issued in mergers and other forms of business combinations and reorganizations. The Commission is proposing to amend Item 5(a) of Form N–14 to require that shareholders be furnished with the information required by the proposed alternatives. In the case of transactions involving mutual funds, that Item currently requires funds using Form N–14 to provide specified material information about the parties to the transaction that also is required by Form N–1A.[37] The performance information that would be called for under either alternative would be equally material to an investment decision relating to the issuance of securities in business combinations involving mutual funds because investors would be interested in obtaining information about a fund's performance before making their investment decisions. The alternative of including the new disclosure in the annual report also would be available to funds in connection with these transactions. In the event that the annual report is made available to investors upon request, then appropriate changes would be made to Form N–14 to assure timely delivery of the required information.[38]

(g) *Incorporation by Reference of Subsequently Filed Information.* As discussed above, a fund could respond to either of the alternative proposals by incorporating by reference into the prospectus information contained in annual reports to shareholders, if investors receive the annual report along with the prospectus or, as is often the case with respect to existing shareholders of a fund, the annual report is delivered before the prospectus.[39] Form N–1A now permits a fund to satisfy its financial information requirements by incorporating by reference into the Statement of Additional Information ("SAI") or prospectus financial information contained in the annual report to shareholders.

General Instruction E of Form N–1A permits a fund to incorporate by reference into the SAI in response to Item 23 of the Form financial statements contained in an annual report meeting the requirements of section 30(d) of the 1940 Act [40] that has been filed by the fund with the Commission, provided that the report is delivered to new shareholders along with the SAI.[41] As a result, the financial statements contained in each new annual report have to be incorporated by reference separately into the SAI when the fund annually updates its registration statement. If a new annual report is issued before the registration statement is updated to incorporate by reference the financial information from the new report, the fund must continue to deliver the old annual report along with the SAI. Alternatively, the fund could file a post-effective amendment incorporating by reference the new annual report when it is issued.

The Commission is proposing to amend General Instruction E to provide for the automatic incorporation by reference into the registration statement of information required by the alternative proposals and Item 23 of Form N–1A and contained in annual reports that are filed subsequently [42] by a fund with the Commission.[43] In either case, if a fund chooses to incorporate by reference into the prospectus or SAI, as appropriate, disclosure in response to the alternative proposals or financial statements in response to Item 23 or both, the fund would be required to state in the prospectus or SAI that the designated information would be deemed to be incorporated by reference into the registration statement and to be a part thereof from the date the reports are filed with the Commission.[44] Therefore, funds could deliver their current annual reports along with their prospectuses or SAIs as soon as the annual reports are filed with the Commission. The accountant's written consent that is required with respect to financial statements incorporated by reference in a previously filed registration statement would be required to be filed with the Commission as an attachment to the annual report. Comment is requested on whether the proposed amendment to General Instruction E should be extended to permit funds to incorporate by reference into the prospectus information contained in a subsequently filed annual report in response to any item of Form N–1A.

The proposed amendment also would require a fund to file as an exhibit to its registration statement those parts of the annual report incorporated by reference. As proposed, this exhibit would not

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sales literature. Thus all performance information in sales literature must be as current as practicable considering the type of investment company and the media through which the advertising will be conveyed, but total return is updated only quarterly The staff has interpreted these provisions to require quarterly updating of any performance information in sales literature.

[36] The Commission is also revising rule 34b–1 to clarify that the currentness provisions apply as of the date of usage of sales literature, and not the date of submission for publication.

[37] General Instruction G to Form N–14 permits this information to be incorporated by reference from the party's prospectus and corresponding Statement of Additional Information if certain conditions are met.

[38] *See* section II.B.3.(a) *supra.*

[39] *Id.*

[40] 15 U.S.C. 80a–29(d).

[41] A copy of the annual report must be furnished, without charge, upon the request of an existing shareholder who already has received the material incorporated by reference. General Instruction E also permits funds to incorporate by reference into the prospectus in response to Item 3(a) of Form N–1A information contained in reports to shareholders that meet the requirements of section 30(d) and are filed with the Commission.

[42] The proposed revision in based on the provisions of Form S–3 [17 CFR 239.13] which require the incorporation by reference into a registration statement on that form of documents filed subsequently by the registrant with the Commission pursuant to 1934 Act section 13(a) or 15(d).

[43] Rule 30b2–1 [17 CFR 270.30b2–1] requires funds to file with the Commission copies of every periodic or interim report containing financial statements and transmitted to a fund's shareholders. The proposed change would apply equally to the incorporation by reference into the prospectus in response to Item 3(a) of Form N–1A of information contained in subsequently filed annual reports.

[44] Rule 412 of Regulation C under the 1933 Act [17 CFR 230.412] provides that any statement contained in any subsequently filed document which is deemed to be incorporated by reference into the registration statement shall be deemed to modify or supersede any previous statement therein to the extent that the statement modifies or replaces that earlier statement.

have to be updated until the fund files its next post-effective amendment.

C. *Portfolio Managers.* The Commission is proposing to add a new Item 5(c) to Form N–1A to require disclosure about all persons who significantly contribute to the investment advice relied on to manage the fund's portfolio. In most cases, this will be the fund's portfolio manager. The proposed amendment is substantially the same as an amendment recently proposed to Form N–2, the registration form used by closed-end funds.[45]

Item 5(c) would require disclosure of the name, title, business experience during the past five years, and period of employment with the adviser of each individual employed by the fund's investment adviser whose participation in providing investment advice may be important to fund investors. The disclosure of this information is intended to make investors aware of the individuals who may not be named as the investment adviser of the fund, but who nonetheless may have a significant impact on the fund's investment success. This disclosure would permit investors to assess the background and experience of such a person and evaluate the extent of the person's responsibility for the previous investment success (or lack thereof) of the fund before making an investment decision.[46] Comment is requested as to whether the requirement that previous business experience be disclosed be limited to securities-related business experience.

If the persons significantly contributing to the investment advice relied on by the fund changed, the prospectus would have to be revised by means of a post-effective amendment or a "sticker" in accordance with rule 497 under the 1933 Act [17 CFR 230.497] because the information contained therein would be materially incorrect. This would inform investors about changes to the fund that may affect the nature of their investment.

The proposed amendment would limit required disclosure to only those persons who, under the organizational arrangements of the investment adviser, make a significant contribution to the investment advice used by the fund. The proposed amendment is based upon Item 401(c) of Regulation S–K [17 CFR 229.401(c)], which requires similar disclosure regarding employees who make, or who are expected to make, significant contributions to the registrant's business, although they are not executive officers. Like those registrants subject to the Item 401(c) disclosure requirement, the success of the fund may be, "to a large extent, contingent upon retaining such persons."[47]

In response to the proposed amendment to Form N–2 to require disclosure concerning fund portfolio managers, the Investment Company Institute (a trade association representing the mutual fund industry, hereinafter "ICI") stated that a fund only should be required to disclose a portfolio manager's identity under the following circumstances: (1) Where "the manager's identity is of such critical importance to the advisory organization that if the person were to leave, the organization would no longer exist or operate in the same manner as it did under the direction of that person;"[48] and (2) whenever the fund promotes that manager to the press or the public as being critical to the investment decisions of the fund.[49] Comment is requested on whether the ICI's recommended formulation would omit material information that investors would want to know before investing. For instance, there may be circumstances where the portfolio manager's background and experience are such that an investor would not invest if he or she knew this information, although the portfolio manager was not critical to the advisory organization's existence and the fund did not promote the portfolio manager as being critical to the investment decisions of the fund. Comment also is requested as to how the Commission or a court could determine whether a manager is "of critical importance to the advisory organization" or whether the advisory organization promotes the manager as being "critical to the investment decisions of the fund."

The Commission requests comment on whether the proposed disclosure requirement should be modeled after Item 401(c), the ICI's proposal, or whether a different test with a more objective standard should be formulated for determining when portfolio manager disclosure is required, and if so, what this test should be. The Commission also requests comment as to whether additional disclosure should be required in the Statement of Additional Information discussing specifically the nature of the adviser's (or the fund's) portfolio decision making process, and the role in that process of any person listed in the prospectus in response to the proposed item.

III. General Request for Comments

Any interested persons wishing to submit written comments on the rule and form changes that are the subject of this release, to suggest additional changes, or to submit comments on other matters that might have an impact on the proposals contained herein, are requested to do so. In particular, comment is requested on the merits of the alternative proposed amendments and whether it would be advisable to combine certain elements of each of the proposals.

IV. Cost/Benefit Analysis

The Commission believes that the rule and form changes proposed today would substantially improve the quality of prospectus disclosure without significantly adding to the cost or burden of existing disclosure requirements. The proposed changes would provide investors material information concerning portfolio managers and fund performance, as well as render the per share table a more effective summary of fund financial information. It is believed that compliance with the proposed changes would only require funds to disclose information that is readily available to them.

Many funds currently compare their performance to that of an index in their prospectuses. Some funds also discuss and analyze their performance in periodic reports to shareholders. In addition, the information required by the proposed alternative items is the type that generally is considered by a fund's board of directors in evaluating the performance of the fund's investment adviser in connection with deciding whether or not to renew its investment advisory contract, as required by section 15(a)(2) of the Investment Company Act [15 U.S.C. 80a–15(a)(2)]. Imposing uniform performance reporting obligations on mutual funds would benefit investors by requiring funds to disclose investment results for

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[45] *See* Release 17091 *supra* note 5. The Commission stated in Release 17091 that it expected to consider proposing for comment similar amdnements to Form N–1A. Reference should be made to Release 17091 for a more detailed discussion of the Commission's prior proposals for similar disclosure.

[46] The Commission also is proposing to require that total return data be included in the condensed financial information in the prospectus. *See* discussion, *supra*. The disclosure of changes in the portfolio manager would allow investors to evaluate the historical performance data in light of this information.

[47] Securities Act Rel. No. 5949 (July 28, 1978) [43 FR 34402 (Aug. 3, 1978)] (incorporating Form S–1 [17 CFR 239.11] disclosure items regarding management of publicly held companies into Regulation S–K).

[48] Letter to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated Oct. 20, 1989, from the Investment Company Institute, at p. 11 in File No. S7–21–89.

[49] *Id.* at 12.

comparable time periods on a regular basis and analyze performance. The alternative proposals also would permit funds the flexibility of including the required information in their annual reports to shareholders rather than in their prospectuses.

To minimize burdens associated with the proposed rule and form changes, the Commission proposes to allow a fund to delay amending its registration statement until it files its next post-effective amendment following adoption of any of the proposed amendments.

The Commission invites specific comments on its assessments of the costs and benefits associated with the various proposals contained in this release, including estimates of any costs and benefits perceived by commenters. In particular, comment is requested on the comparative costs and benefits of the proposed alternative amendments to Form N–1A and the various parts of each proposal.

V. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accrdance with 5 U.S.C. 603 regarding the proposed amendments. The analysis notes that the rule and form proposals contained in this release are intended to improve the quality of investor disclosure by requiring more information about portfolio managers and the performance of the fund, and simplifying the per share table. Other aggregate cost-benefit information reflected in the "Cost/Benefit Analysis" section of this release also is reflected in the analysis. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Larisa E. Dobriansky, Mail Stop 5–2, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

VI. Text of Proposed Rule and Form Amendments

List of Subjects in 17 CFR Parts 230, 239, 270, 274

Investment companies, Reporting and recordkeeping requirements, Securities

The Commission is proposing to amend Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Regulation C of part 230 continues to read as follows:

Authority: Sections 230.400 to 230.499 issued under Secs. 6, 8, 10, 19, 48 Stat. 78, 79, 81, 85, as amended (15 U.S.C. 77f, 77h, 77j, 77s); * * *

2. By revising paragraph (b)(1)(iii) of § 230.485 to read as follows:

§ 230.485 Effective date of post-effective amendments filed by certain registered investment companies.

* * * * *

(b) * * *

(1) * * *

(iii) Bringing the financial statements and other information up to date pursuant to section 10(a)(3) of the Act, and in conjunction therewith, making such other non-material changes as the registrant deems appropriate and, in the case of a post-effective amendment to a registration statement filed by a registered open-end management investment company, providing the information required by Item 3A [or Item 5A] of Form N–1A; and

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

3. The authority citation for part 239 continues to read, in part, as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a, *et seq.*, unless otherwise noted.

4. By revising paragraph (a) of Item 5 of Form N–14 in § 239.23 to read as follows:

§ 239.23 Form N–14, for the registration of securities issued in business combination transactions by investment companies and business development companies.

* * * * *

Item 5. Information about the Registrant

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(a) If the Registrant is an open-end management investment company, furnish the information required by Items 3, 4(a) and (b), 5, 5A [or 3A], 6(a), (c), (d), (e), (f), and (g), and 7 through 9 of Form N–1A under the 1940 Act;

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

5. The authority citation of part 270 continues to read as follows:

Authority: Secs. 38, 40, 54 Stat. 841, 842; 15 U.S.C. 80a–37, 80c–89. The Investment Company Act of 1940, as amended, 15 U.S.C. 80a–1 *et seq.*; unless otherwise noted.

6. In the case of Alternative II, by amending the current text of § 270.31a–1 by redesignating paragraph (b)(12) as paragraph (b)(13) and by adding a new paragraph (b)(12) to read as follows:

§ 270.31a–1 Records to be maintained by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.

* * * * *

(b) * * *

(12) All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of any investment company performance or securities index data contained in any prospectus or report to shareholders.

* * * * *

7. In the case of Alternative II, by revising the current text of § 270.31a–2(a)(3) to read as follows:

§ 270.31a–2 Records to be preserved by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.

(a) * * *

(3) Preserve for a period not less than 6 years from the end of the fiscal year last used, the first 2 years in an easily accessible place, any advertisement, pamphlet, circular, form letter or other sales literature addressed to or intended for distribution to prospective investors and all accounts, books, and internal working papers required to be maintained by rule 31a–1(b) (12) of the Act [17 CFR 270.31a–1(b)(12)].

* * * * *

8. By revising § 270.34b–1 to read as follows:

§ 270.34b–1 Sales literature deemed to be misleading.

(a) Except as provided in paragraph (b) below, any advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors that is required to be filed with the Commission by section 24(b) of the Act [15 U.S.C. 80a–24(b)] and that contains any investment company performance data ("sales literature") shall have omitted to state a fact necessary in order to make the statements made therein not materially misleading unless the sales literature also contains performance data specified in subparagraphs (1), (2) and (3) of this section, and the disclosure required by paragraph (a)(6) of rule 482 under the Securities Act of 1933 [17 CFR 230.482(a)(6)], and the performance data contained therein complies with the currentness requirements of paragraph (f) of rule 482 [17 CFR 230.482(f)].

(1) Sales literature containing any investment company performance data (except that of a money market fund) shall also contain the total return information required by paragraph (e)(3) of rule 482 [17 CFR 230.482(e)(3)].

(2) Sales literature containing a quotation of yield or other similar quotation purporting to demonstrate the income earned or distributions made by the company shall contain a quotation of current yield specified by paragraph (e)(1) of rule 482 [17 CFR 230.482(e)(1)], or, in the case of a money market fund, paragraph (d)(1) of rule 482 [17 CFR 230.482(d)(1)].

(3) Sales literature containing a quotation of tax equivalent yield or other similar quotation purporting to demonstrate the tax equivalent of income earned or distributions made by the company shall contain a quotation of tax equivalent yield specified by paragraph (e)(2) and current yield specified by paragraph (e)(1) of rule 482, or, in the case of a money market fund, paragraph (d)(1) of rule 482 [17 CFR 230.482(d)(1)].

Note: Sales literature containing a quotation of yield or tax equivalent yield must also contain the total return information. In the case of sales literature, the currentness provisions apply from the date of distribution and not submission for publication.

(b) The requirements specified in paragraph (a) of this section shall not apply to any quarterly, semi-annual or annual report to shareholders under section 30(d) of the Act [15 U.S.C. 80a-29(d)], containing performance data for a period commencing no earlier than the first day of the period covered by the report; nor shall the requirements of paragraphs (e)(3)(ii) and (f) of rule 482 [17 CFR 230.482(e)(3)(ii), and (f)] apply to any such periodic report containing any other performance data.

PARTS 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

9. The authority citation for part 239 continues to read as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a, *et seq.*, unless otherwise noted.

10. The authority citation for part 274 continues to read as follows:

Authority: The Investment Company Act of 1940, 15 U.S.C. 80a-1 *et seq.*, unless otherwise noted; * * *

§ 239.15A Form N-1A, registration statement of open-end management investment companies.

§ 274.11A Form N-1A, registration statement of open-end management investment companies.

Note: Form N-1A is not codified in the Code of Federal Regulations.

11. By revising the fourth paragraph of General Instruction E of Form N-1A (17 CFR 239.15A and 274.11A) to read as follows:

* * * * *

General Instructions

* * * * *

E. Incorporation by Reference

* * * * *

Subject to the above rules and the conditions enumerated below, a Registrant may incorporate by reference into the prospectus or the Statement of Additional Information in response to any of the following Items of the Form the information contained in any report to shareholders meeting the requirements of section 30(d) of the 1940 Act [15 U.S.C. 80a-29(d)] and Rule 30d-1 [17 CFR 270.3d-1] thereunder, that has been filed by the Registrant with the Commission: (a) Item 3(a); (b) Item 23; and (c) Item 3A [5A]. In that event, notwithstanding the above rules, the Registrant also will incorporate by reference in response to the same Item(s) the information contained in annual reports to shareholders meeting the same requirements that are filed subsequently by the Registrant with the Commission. The following conditions must be satisfied in connection with incorporating information by reference in accordance with this Instruction:

1. The material that is incorporated by reference is prepared in accordance with this Form;

2. The Registrant includes a statement at the place in the prospectus or the Statement of Additional Information where the information required by the relevant Item(s) specified above would otherwise appear that the information is incorporated by reference from a report to shareholders. The Registrant also will state that the updated information contained in any subsequently filed annual report to shareholders will be deemed to be incorporated by reference in the prospectus or Statement of Additional Information and to be a part thereof from the date of filing such document with the Commission.

* * * * *

4. The Registrant will submit to the Commission, as an attachment to financial statements to be incorporated by reference into the previously filed registration statement, the written consent of the accountant or accountants to the incorporation of that material. That consent will be deemed to be filed with the Commission.

5. The Registrant will file as an exhibit to the registration statement those parts of the annual report to shareholders incorporated by reference therein. That exhibit must be updated at the time the Registrant files its next post-effective amendment.

* * * * *

12. By revising paragraph 4 of General Instruction F of Form N-1A [17 CFR 239.15A and 274.11A] to read as follows:

* * * * *

General Instructions

* * * * *

F. Documents Comprising Registration Statement or Amendment

* * * * *

4. A registration statement or an amendment thereto which is filed under only the 1940 Act shall consist of the facing sheet of the Form, responses to all items of parts A and B except Items 1, 2, 3 and 5A [or 3A] of part A thereof, responses to all items of part C except Items 24(b)(6), 24(b)(10), 24(b)(11), and 24(b)(12), required signatures, and all other documents which are required or which the Registrant may file as part of the registration statement.

* * * * *

13. By revising Item 3 of Form N-1A (17 CFR 239.15A and 274.11A) to read as follows:

* * * * *

Item 3. Condensed Financial Information

(a) Furnish the following information for the Registrant, or for the Registrant and its subsidiaries, consolidated as prescribed in rule 6-03 [17 CFR 210.6-03] of Regulation S-X.

Per Share Income and Capital Changes (for a share outstanding throughout the year)

1. Net Investment Income
2. Net Gains or Losses on Securities (both realized and unrealized)
3. Dividends (from net investment income)
4. Distributions (from capital gains)
5. Net Asset Value (at end of period)

Ratios

6. Expense Ratio (expenses to average net assets)
7. Income Ratio (net investment income to average net assets)
8. Portfolio Turnover Rate
9. Total Return
10. Net Assets at End of Period (000s)

Instructions:

1. Present the information in comparative columnar form for each of the last ten fiscal years of the Registrant (or for the life of the Registrant and its immediate predecessors, if less) but only for periods after the effective date of Registrant's 1933 Act registration statement. In addition, present the information for the period between the end of the latest fiscal year and the date of the latest balance sheet or statement of assets and liabilities furnished. Where the period for which the Registrant provides condensed financial information is less than a full fiscal year, the ratios set forth in the table may be annualized but the fact of this annualization must be disclosed in a note to the table.

2. List per share amounts at least to the nearest cent. If the computation of the offering price is extended to tenths of a cent or more, then state the amounts on the table

in tenths of a cent. Present the information using a consistent number of decimal places.

3. Make, and indicate in a note, all appropriate adjustments to reflect any stock split or stock dividend during the period.

4. If the investment adviser has been changed during the period covered by this item, disclose the date(s) of the change(s) in a note.

5. The condensed financial information for not less than the latest five fiscal years must be audited and must so state. The auditor's report as to the condensed financial information need not be included in the prospectus.

6. Derive the amount to be shown at caption 1 by adding (deducting) the increase (decrease) per share in undistributed net investment income for the year to (from) dividends from net investment income per share for the year. Such increase (decrease) may be derived from a comparison of the per share figures obtained by dividing the undistributed net investment income at the beginning and end of the year by the number of shares outstanding on those respective dates. Other methods may be acceptable, but should be explained in a note to the table.

7. The amount to be shown at caption 2, which is derived by adding together the amounts computed for the periods during the year when shares were sold or repurchased (which could be as often as twice daily), is also the balancing figure derived from the other figures in the statement and should be so computed. The amount shown at this caption for a share outstanding throughout the year may not agree with the change in the aggregate gains and losses in the portfolio securities for the year because of the timing of sales and repurchases of Registrant's shares in relation to fluctuating market values for the portfolio.

8. If any distribution were made from capital sources other than net realized profits on securities, state the per share amounts thereof separately immediately below caption 3. In a note indicate the nature of such distributions.

9. In caption 5, the net asset value should be set forth at the end of each period for which the information in the table is being provided.

10. Compute the "average net assets," as used in captions 6 and 7, upon the basis of the value of the net assets determined no less frequently than as of the end of each month.

11. Compute the portfolio turnover rate to be shown at caption 8 as follows:

a. Divide (A) the lesser of purchases or sales of portfolio securities for the particular fiscal year by (B) the monthly average of the value of the portfolio securities owned by the Registrant during the fiscal year. Calculate the monthly average by totalling the values of the portfolio securities as of the beginning and end of the first month of the particular fiscal year and as of the end of each of the succeeding eleven months and dividing the sum by 13.

b. Exclude from both the numerator and the denominator all securities, including options, whose maturity or expiration date at the time of acquisition were one year or less. All long-term securities, including long-term U.S. Government securities, should be included. Purchases shall include any cash paid upon the conversion of one portfolio security into another and the cost of rights or warrants purchased. Sales shall include the net proceeds of the sale of rights or warrants and the net proceeds of portfolio securities that have been called, or for which payment has been made through redemption or maturity.

c. If during the fiscal year the Registrant acquired the assets of another investment company or of a personal holding company in exchange for its own shares, exclude from purchases the value of securities so acquired, and from sales, all sales of such securities made following a purchase-of-assets transaction to realign the Registrant's portfolio. In such event, make appropriate adjustment in the denominator of the portfolio turnover computation and disclose such exclusions and adjustments.

d. Short sales that the Registrant intends to maintain for more than one year and put and call options where the expiration date is more than one year from the date of acquisition are included in purchases and sales for purposes of this item. The proceeds from a short sale should be included in the value of the portfolio securities that the Registrant sold during the period and the cost of covering a short sale should be included in the value of the portfolio securities which the Registrant purchased during the period. The premiums paid to purchase options should be included in the value of the portfolio securities that the Registrant purchased during the reporting period and the premiums received from the sale of options should be included in the value of the portfolio securities that the Registrant sold during the period.

e. If periods prior to 1985 are not calculated on the same basis as that required above, disclose this in a note to the table.

12. When calculating the "total return" to be shown at caption 9:

a. Assume a purchase of common stock at the then-current per share net asset value on the first day and a sale at the then-current per share net asset value on the last day of each period reported in the table;

b. Do not reflect sales load or account fees (Indicate in a footnote, if relevant, that the total return does no reflect sales load or account fees.); and

c. Assume reinvestment of all dividends and distributions at the per share offering price.

* * * * *

14. By redesignating current paragraphs (c), (d), (e), and (f) of Item 5 of Form N–1A (17 CFR 239.15A and 274.11A) as (d), (e), (f), and (g), and adding a new paragraph (c) to read as follows:

* * * * *

Item 5. Management of the Fund

* * * * *

(c) Disclose the name and title of all persons who make or are expected to make significant contributions to the investment advice provided to the Registrant and describe each person's business experience during the past five years and the length of time he or she has been employed by or associated with the investment adviser (or Registrant);

* * * * *

15. In case of Alternative II, by adding Item 3A to Form N–1A (17 CFR 239.15A and 274.11A) to read as follows:

* * * * *

Item 3A. Disclosure of Investment Performance

(a)(1) Unless the Registrant is a money market fund described in subparagraph (a)(2) of this Item, compare the total returns that the Registrant achieved for each of the last one, five and ten year periods ending on the last day of its most recent fiscal year to those of an appropriate index of securities over the same time periods.

(2) In the case of a money market fund that is eligible to quote a seven day yield under Item 22 of this form, compare the yield(s) that the Registrant achieved during the last fiscal year to an appropriate index of short-term securities or money market securities.

(3) If the Registrant selects a different index from the one it used previously, in each form of prospectus used during the twelve month period following the date of the first prospectus in which the new securities index ws incuded, explain the reason(s) for this change and compare the respective total returns or, in the case of money market funds, yield(s), with those of the index used previously.

(b) Discuss the impact that any formal or informal policy as to the maintenance of a specified level of distributions to shareholders had on investment strategies of the fund and per share net asset value during the Registrant's last fiscal year.

Instructions:

1. The index comparison called for by this Item must be set forth in a manner that can be readily understood by investors (*i.e.*, a graph, chart or appropriate tabular format). Include a statement explaining that past performance is not predictive of future performance.

2. The index that the Registrant uses in response to this Item must be adjusted to reflect the reinvestment of dividends, but not to reflect the Registrant's expenses. For purposes of this Item, an "appropriate securities index" must be one that is created and administrated by an organization that is not an affiliated person of the Registrant, its investment adviser or principal underwriter, unless the index is widely recognized and used.

3. In presenting total return for purposes of this Item, the Registrant may use either the average annual total return computed in the manner set forth in Item 22 of this form or an aggregated total return, provided that the total return reflects sales loads, account fees and all fund expenses.

4. If the Registrant's registration statement under the Securities Act of 1933 has been effective for less than five or ten years, substitute the period of effectiveness for the five and/or ten year period specified in subparagraph (a)(1) of this Item.

5. The Registrant must include the information required by this Item in the first

form of prospectus used after the end of its first fiscal year, if that prospectus or related Statement of Additional Information contains audited financial statements covering a period of at least six months; otherwise, the information required by this Item must be included in the first form of prospectus used after its second fiscal year.

6. If the Registrant is a series company, include the information required by this Item for each series.

* * * * *

16. In the case of Alternative I, by adding Item 5A to Form N–1A (17 CFR 239.15A and 274.11A) to read as follows:

* * * * *

Item 5A. Management's Discussion and Analysis of Investment Performance

(a) Discuss and analyze the Registrant's performance during its last fiscal year in relation to its investment objectives. Indentify and evaluate the factors that materially affected performance. Evaluate the effectiveness of significant investment techniques and strategies used to pursue the investment objectives, and describe any material effects that those techniques and strategies had on total return.

(b) Discuss the impact that any formal or informal policy as to the maintenance of a specified level of distributions to shareholders had on investment strategies of the fund and per share net asset value during the Registrant's last fiscal year.

Instructions:

1. The purpose of the discussion and analysis is to provide investors information relevant to an assessment of the Registrant's performance, given its investment objectives and policies. The Registrant should use an approach that will enable investors to best understand how it has achieved its performance. Include a statement explaining that past performance is not predictive of future performance.

2. The discussion and analysis in response to paragraph (a) of this Item should focus only on factors, techniques, and strategies materially affecting performance during the last fiscal year. These factors, techniques, and strategies may (but are neither limited to nor required to) include the following: developments in the markets in which the portfolio securities traded, composition of the Registrant's portfolio (e.g., types of issuers (capitalization, industry grouping, foreign or domestic), types of securities, quality of portfolio securities, average maturity of portfolio securities, cash equivalent position), net asset value of the fund, expense ratio, portfolio turnover, sales and redemption trends, currency fluctuations, hedging transactions, whether the fund assumed at any time a temporary defensive position.

3. The Registrant must include the information required by this Item in the first form of prospectus used after the end of its first fiscal year, if that prospectus or related Statement of Additional Information contains audited financial statements covering a period of at least six months; otherwise, the information required by this Item must be included in the first form of prospectus used after its second fiscal year.

4. If the Registrant is a series company, include the information required by this Item for each series.

By the Commission.

Dated: January 8, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–836 Filed 1–12–90; 8:45 am]

BILLING CODE 6010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 10, 310, 314, and 320

[Docket No. 85N–0214]

RIN 0905–AB63

Abbreviated New Drug Application Regulations; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to April 9, 1990, the comment period for the proposed rule to implement Title I of the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (July 10, 1989; 54 FR 28872). The proposal provides for the submission of abbreviated new drug applications (ANDA's) for generic versions of drug products. This document extends for 90 days the time for submission of comments on the proposal.

DATE: Comments by April 9, 1990.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, or, Wayne H. Mitchell, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8049.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 10, 1989 (54 FR 28872), FDA issued a proposed rule to implement Title I of the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417), which amends section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355). The proposal provides for the submission of ANDA's for generic versions of drug products. These new provisions are intended to benefit consumers by making generic drug products available more quickly. The proposal gave interested persons an opportunity to submit written comments for 90 days (by October 10, 1989).

In the Federal Register of October 11, 1989 (54 FR 41629), FDA extended the comment period to January 9, 1990, in response to requests from several organizations. These organizations requested additional time to respond adequately to the proposal because of complex issues and questions that need careful analysis and evaluation. FDA carefully evaluated the requests and determined that a 90-day extension to the comment period for the preparation and submission of meaningful comments to a detailed and complex proposed rule was in the public interest.

FDA has received another request to extend the comment period for an additional period of time. The request asked that the comment period be extended to permit the generic drug industry to prepare and submit to FDA meaningful comments.

FDA has carefully considered this request and has determined that, because of the complexity of the proposed rule and the interest in the generic drug program, there has been insufficient time for interested persons to evaluate the proposal and to submit meaningful comments to the agency. Accordingly, the comment period for submission of comments by any interested person is extended to April 9, 1990.

Interested persons may, on or before April 9, 1990, submit written comments regarding this proposal to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 9, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90–980 Filed 1–10–90; 2:47 pm]

BILLING CODE 4160–01–M

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21 CFR Parts 310, 343, and 369

[Docket No. 77N–0094]

RIN 0905–AA06

Internal Analgesic, Antipyretic, and Antirheumatic Drug Products for Over-the-Counter Human Use; Tentative Final Monograph; Extension of Reply Comment Period

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking; extension of reply comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to March 16, 1990, the period for comments on new data for the notice of proposed rulemaking to establish conditions under which over-the-counter (OTC) internal analgesic, antipyretic, and antirheumatic drug products are generally recognized as safe and effective and not misbranded. This action responds to a request to extend the reply comment period for an additional 60 days to allow more time for interested persons to review and respond to the extensive comments and new data that have been submitted.

DATE: Written comments by March 16, 1990.

ADDRESSES: Written comments to the Docket Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8000.

SUPPLEMENTARY INFORMATION: In the Federal Register of November 16, 1988 (53 FR 46204), FDA issued a notice of proposed rulemaking to establish conditions under which OTC internal analgesic, antipyretic, and antirheumatic drug products are generally recognized as safe and effective and not misbranded. This notice of proposed rulemaking, which was based on the agency's evaluation of the recommendations of the Advisory Review Panel on OTC Internal Analgesic and Antirheumatic Drug Products and the Advisory Review Panel on OTC Miscellaneous Internal Drug Products and public comments on those recommendations, is part of the ongoing review of OTC drug products conducted by the agency. Interested persons were given until November 16, 1989, to submit new data and until January 16, 1990, to comment on the new data.

In response to the proposal, Bristol-Myers Products requested a 60-day extension of the reply comment period to allow adequate time for the company to thoroughly review and formulate appropriate comprehensive responses and comments concerning the new data submitted. The company noted that no less than seven respondents had submitted comments and/or new data on matters so diverse as label warnings, dissolution rate specifications, and safety of acetaminophen. The company added that no less than 15 reports of clinical studies had been submitted. The company concluded that this extension of time to prepare a more thorough and comprehensive evaluation of these comments and new data would benefit both the company and the agency.

FDA has carefully considered the request. The agency acknowledges that a large amount of data have been submitted, much of it in November 1989. The agency believes that additional time for reply comments on the massive amount of data submitted is in the public interest, and may be of assistance in establishing conditions under which OTC internal analgesic, antipyretic, and antirheumatic drug products are generally recognized as safe and effective and not misbranded. Thus, the agency considers a general extension of the reply comment period for 60 days to be appropriate.

Interested person may, on or before March 16, 1990, submit to the Dockets Management Branch (address above) written comments on the new data submitted to the notice of proposed rulemaking. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 10, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90–1029 Filed 1–11–90; 10:42 am]

BILLING CODE 4160–01–M

21 CFR Part 1020

[Docket No. 82N–0274]

Federal Performance Standard for Diagnostic X-Ray Systems and Their Major Components; Proposed Amendments; Correction

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration is making technical corrections to the proposed rule which would amend the Federal performance standard for diagnostic X-ray systems and their major components. The proposed rule appeared in the Federal Register of October 17, 1989 (54 FR 42674).

FOR FUTHER INFORMATION CONTACT: Samuel Fleisher, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

In FR Doc. 89–24366, appearing at page 42674, in the Federal Register of Tuesday, october 17, 1989, the following corrections are made:

1. On page 42681, in the first column, in the third and fifth paragraphs, and in the second column, in lines 3 and 10, and in the first full paragraph, "§ 1020.32(d)(4)" is corrected to read "current § 1020.32(d)(3)" wherever it appears.

§ 1020.31 [Corrected]

2. On page 42688, in the first column, in § 1020.31(c)(1), in the ninth line, "$X_1 - X_2 \leq 0.10(X_1 + X_2)$" is corrected to read "absolute $(X_1 - X_2) \leq 0.10(X_1 + X_2)$", and in § 1020.31(c)(2), in the ninth line, "$X_1 - X_2 0.10(X_1 + X_2)$" is corrected to read "absolute $(X_1 - X_2) \leq 0.10(X_1 + X_2)$".

§ 1020.32 [Corrected]

3. On page 42691, in the second column, in § 1020.32(d)(1) in the first sentence, the phrase "(C/kg)(10 roentgens per minute)(10 R/min)" is corrected to read "C/kg per minute (10 R/min)".

Dated: January 5, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90–883 Filed 1–12–90; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 7 and 602

[INTL–704–87]

RIN 1545–AL35

Certain Corporate Distributions to Foreign Corporations

AGENCY: Internal Revenue Service, Treasury.

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

SUMMARY: In the Rules and Regulations portion of this issue, the Internal Revenue Service is issuing temporary Income Tax Regulations that add new sections necessary to implementing section 367(e) (1) and (2) of the Internal Revenue Code of 1986, relating to certain corporate distributions to foreign shareholders. These provisions affect the taxability of both corporate distributors and shareholder

distributees. The regulations also add certain provisions under section 367 (a) and (b) concerning reorganizations under section 368(a)(1)(F) involving foreign corporations. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed before March 19, 1990.

Except as set forth below, these regulations are proposed to be effective with respect to distributions after July 31, 1986. The following provisions have the following special proposed effective dates:

§ 1.367(a)–1(e) April 1, 1987
§ 1.367(a)–1(f) January 1, 1985
§ 1.367(e)–1 February 16, 1990
§ 1.367(b)–1(e) April 1, 1987
§ 1.367(b)–1(f) January 1, 1985

ADDRESS: Send comments and requests for a public hearing to Commissioner of Internal Revenue, (Attention: CC:CORP:T:R INTL–704–87), Room 4429, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Charles P. Besecky of the Office of Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202–566–6444, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1545–1124), Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer TR:FP, Washington, DC 20224.

The collection of information in this regulation is in § 1.367(e)–1T(c)(2) and § 1.367(e)–2T (b)(2)(i) and (c)(2)(i). This information is required by the Internal Revenue Service to ensure that gains recognized by the distributing and distributee corporations are reported on the appropriate income tax return. This information will be used to assure compliance with the provisions of the regulation. The likely respondents are business or other for-profit institutions.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending upon their particular circumstances.

Estimated total annual reporting and/or recordkeeping burden: 3,200 hours.

Estimated average annual burden per respondent: 8 hours.

Estimated number of respondents: 400.

Estimated annual frequency of responses: 1.

Background

The temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** add §§ 1.367(a)–1T (e) and (f), 1.367(e)–0T, 1.367(e)–1T, and 1.367(e)–2T to 26 CFR part 1, and add new paragraphs (e) and (f) to § 7.367(b)–1 of 26 CFR part 7. The final regulations that are proposed to be based on these temporary regulations would amend 26 CFR parts 1, 7, and 602 by adding these temporary regulations as final regulations under section 367 (a), (b), and (e) of the Internal Revenue Code of 1986. For the text of the temporary regulations, see [T.D. 8280] published in the Rules and Regulations portion of this issue of the **Federal Register.**

Special Analyses

It has been determined that this proposed rule is not a major rule as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It is hereby certified that the proposed rule will not have a significant impact on a substantial number of small entities. Few small entities would be affected by these regulations. A regulatory flexibility analysis, therefore, is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6). 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 adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted 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 author of these regulations is Charles P. Besecky of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of substance and style.

List of Subjects

26 CFR 1.301–1 to 1.385–6

Income taxes, Corporations, Corporate Distributions, Corporate adjustments and reorganizations.

CFR Part 7

Income taxes, Tax Reform Act of 1976.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposal of Regulations

The temporary regulations, FR Doc. [T.D. 8280] published in the Rules and Regulations portion of this issue of the **Federal Register,** are hereby also proposed as final regulations under section 367 (a), (b), and (e) of the Internal Revenue Code of 1986.

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

[FR Doc. 90–483 Filed 1–12–90; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 220

Collection From Third Party Payers of Reasonable Hospital Costs

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the current DoD regulation governing collection from third party payers of reasonable inpatient hospital care costs incurred on behalf of retirees and dependents under title 10, U.S. Code section 1095. The proposed rule would clarify rights and obligations of third party payers and health care beneficiaries under this statute and establish applicable procedures.

DATE: Written comments must be received on or before March 2, 1990.

ADDRESSES: Interested persons are invited to submit written comments to:

Office of the Assistant Secretary of Defense (Health Affairs), Attention: Ms. Barbara Cooper, Room 1B657, Pentagon, Washington, DC 20301–1200.

FOR FURTHER INFORMATION CONTACT: Barbara Cooper, telephone (202) 695–3323.

SUPPLEMENTARY INFORMATION:

I. Background

As part of the Consolidated Omnibus Budget Reconciliation Act of 1985, Congress enacted 10 U.S.C. 1095 to require the Department of Defense to collect from third party payers reasonable inpatient hospital care costs incurred on behalf of nonactive duty DoD health care beneficiaries. This legislation was based on the premise that private health care plans should not avoid payment for inpatient health care services provided to their plan beneficiaries because those beneficiaries also happen to be entitled to space available care in military facilities. Currently, the law applies only to inpatient care; it does not apply to outpatient services.

To implement this statute, the Department of Defense issued a proposed rule October 8, 1986, and a final rule September 25, 1987. This part, 32 CFR part 220, established basic rules and procedures for carrying out what was referred to as the "coordination of benefits" program.

After several years of experience, it has become apparent that the basic Congressional purpose is not being effectuated. As an illustration, although it was estimated that collections could reach $100 million per year when the program reached full operation, fiscal year 1988 results show a much lower level of activity: $32 million billed, $16 million collected. In fiscal year 1989, $38 million was billed and $17 million was collected.

In its desire to improve the effectiveness of this program, Congress has very recently amended 10 U.S.C. 1095 to provide that funds collected under this program, rather than being turned over to the general treasury, may be credited to the appropriations account supporting the facility at which the care was provided. National Defense Authorization Act for Fiscal Year 1990, Pub. L. 101–189, section 727. The intent of this provision is to provide an incentive for facilities of the uniformed services more aggressively to implement this program. In addition, the Department of Defense Appropriations Act, 1990, Pub. L. 101–165, section 9101, expressed support for "increasing collections from third party payers" under this program.

Another noteworthy development is that the Office of the Inspector General of the Department of Defense is in the process of completing an exhaustive audit documenting a number of reasons for the disappointing results. These include an inadequate effort on the part of many military hospitals to identify cases covered by 10 U.S.C. 1095 and to seek payment from the applicable third party payer in accordance with the law. Another reason may be that the Department of Defense has not previously provided a substantial amount of regulatory guidance to interested parties concerning implementation of the statute.

The purpose of this proposed rule is to remedy the latter problem and to do so in a manner that will facilitate smooth handling of the anticipated increased billings that will result from efforts (including the recent legislative amendment) to remedy the former problem.

II. Provisions of the Proposed Rule

With this as background, the following is a section-by-section description of the proposed rule. Preliminarily, however, two introductory points are noteworthy. First, for purposes of clarity, our proposed rule is set forth as a complete revision of part 220, made up of some provisions carried over with little or no substantive change, as well as a number of completely new provisions. Also, some of the provisions of the current part 220 that have not been carried over to this proposed rule are requirements purely internal in nature. These types of provisions will be incorporated in revised internal instructions in the near future. All substantive requirements applicable to external parties are intended to be included in this proposed rule. With this understanding, our invitation for public comment covers not only the new provisions reflected in this proposed rule, but also all prior provisions proposed to be carried over, as well as the proposed deletion of any provision of the current part 220.

The second introductory comment is that we propose to use the title "Collection from third party payers of reasonable hospital costs," for part 220, which is derived from the statutory headnote of 10 U.S.C. 1095. The current title of part 220 is "Coordination of Benefits." This term, which the insurance industry uses to label the process of sorting out respective responsibilities when more than one third party payer is involved, is something of a misnomer for the statutory mandate of 10 U.S.C. 1095.

A. Purpose and Applicability (Proposed § 220.1)

This section simply states the purpose and applicability of part 220 in relation to the statute.

B. Statutory Obligation of Third Party Payer To Pay (Proposed § 220.2)

1. Basic Rule

Proposed paragraph 220.2(a) restates a third party payer's basic obligation under the statute. The statute requires that in the case of nonactive duty health care beneficiaries,

> the United States shall have the right to collect from a third party payer the reasonable costs of inpatient hospital care incurred by the United States on behalf of such person through a facility of the uniformed services to the extent that the person would be eligible to receive reimbursement or indemnification from the third party payer if the person were to incur such costs on the person's own behalf.

10 U.S.C. 1095(a)(1).

2. Application of Cost Shares.

Proposed paragraph 220.2(b) restates the statutory provision (the second sentence of 10 U.S.C. 1095(a)(1)) that the payment due the United States may take into account any copayments and deductibles under the third party payer's health plan.

3. Claim from United States Exclusive

Proposed paragraph 220.2(c) attempts to clarify the Department of Defense's interpretation of the statute in connection with one of several issues identified by the Inspector General as being a possible source of confusion. The issue is how 10 U.S.C. 1095 applies to a situation in which the third party payer made payment directly to the beneficiary for care provided in a facility of the uniformed services. As noted above, the statute says "the United States shall have the right to collect from a third party payer * * *" It is our view that a third party payer's obligation under this section is not satisfied by the third party payer paying the patient. Not only would payment to the patient not satisfy 10 U.S.C. 1095, it is also very doubtful that any valid claim could be made by the patient to the third party payer. Typically, an insured person can only be reimbursed by the insurer for expenses actually incurred; a patient who did not pay for the health care services would not be entitled to reimbursement from the third party payer.

Thus, payments from the third party payer to the patient would not be appropriate under 10 U.S.C. 1095 and

would probably also not be appropriate under the third party payer's policy or program. The latter issue, of course, would be between the third party payer and the patient. As far as the Department of Defense's posture is concerned, it is that: payment to the patient does not satisfy 10 U.S.C. 1095; the 10 U.S.C. 1095 claim must be paid by the third party payer to the Department of Defense; and in cases in which the third party payer erroneously pays the beneficiary, it is the third party payer's responsibility to recover from the beneficiary. This position is reflected in proposed paragraph 220.2(c).

4. Assignment of Benefits Not Necessary

Proposed paragraph 220.2(d) deals with another issue on which the Inspector General's report will suggest guidance: whether beneficiaries must execute an assignment of benefits form for the third party payer to pay. It is our view that no such form is needed because under 10 U.S.C. 1095, the right to collect is already assigned to the government. Unless the patient actually incurs some expenses for the hospital care provided in the facility of the uniformed services, the patient likely has no benefit to assign under the terms of the third party payer's plan. Thus, in general, assuming that the patient has made no payment for the services received (this issue is discussed below in connection with paragraph 220.8(b)), the third party payer need only recognize that it's sole obligation for payment is to the United States and that this obligation is not dependent upon any assignment of benefits. Paragraph 220.2(d) reflects this position.

C. Exclusions Impermissible (Proposed Section 220.3)

Proposed section 220.3 attempts to provide useful operational rules to implement 10 U.S.C. 1095(b) of the statute, which states:

> No provision of any insurance, medical service, or health plan contract or agreement having the effect of excluding from coverage or limiting payment of charges for certain care if that care is provided through a facility of the uniformed services shall operate to prevent collection by the United States * * *

1. Statutory Requirement

Proposed paragraph 220.3(a) restates this statutory requirement.

2. General Rules Regarding Exclusions

Proposed paragraph 220.3(b) establishes several general rules derived from the basic statutory requirement. We believe these general rules will help interested parties resolve issues that may arise later that have not been expressly addressed in the regulation. The first general rule states one of the obvious results of 10 U.S.C. 1095(b): express exclusions of limitations inconsistent with 10 U.S.C. 1095 are inoperative.

The second general rule is that no objection, precondition or limitation may be asserted that defeats the statutory purpose of collecting from third party payers. This extends the second general rule a little bit to cover situations in which a third party payer's plan might at first not appear to treat facilities of the uniformed services less favorably, but does produce that effect. This interpretation is based on the statutory formulation of the prohibition in terms of provisions that "have the effect" of excluding or limiting payment.

The third general rule is that third party payers may not treat claims arising from services provided in facilities of the uniformed services less favorably than they treat claims arising from services provided in other hospitals. This interpretation is based on the key concepts embodied in the statute that the obligation to pay is "to the extent" the third party payer would pay other hospitals (10 U.S.C. 1095(a)) and that provisions that have the effect of excluding or limiting payment are prohibited (10 U.S.C. 1095(b)). We believe the general rule disallowing less favorable treatment provides a useful method of analyzing situations to assure compliance with the statute.

Finally, the fourth general rule set forth in proposed paragraph 220.3(b) states that no objection, precondition or limitation may be asserted that is contrary to the basic nature of facilities of the uniformed services. This deals with one kind of circumstance that the second general rule addresses: a provision that looks neutral on its face, but if applied to a facility of the uniformed services would be contrary to the essential character of such facilities. This is based on our interpretation that Congress clearly understood the basic nature of facilities of the uniformed services and viewed provisions inconsistent with that nature as "having the effect" of improperly defeating the statutory purpose.

In addition to comment on these proposed general rules, we invite comment on any additional general rules interested parties may believe appropriate.

3. Examples of Impermissible Exclusions

Proposed paragraph 220.3(c) provides specific examples of exclusions impermissible under the statutory requirement and the general rules. These examples are not all inclusive; rather, they are illustrative. Also, although one example is given for each of the general rules, some of the examples could be said to pertain to more than one of the general rules.

Care provided by a government facility. The first example of an impermissible exclusion is a provision that purports to disallow payment for services provided by a government entity or paid for by a government program. This is an example of the first general rule stated above. Congressional intent regarding the elimination of the exclusions such as this was made clear by the legislative history of 10 U.S.C. 1095. The House Committee Report stated:

> The principal reason that military medical facilities do not presently attempt to collect for the cost of care is that many insurance contracts contain exclusionary clauses. These exclusionary clauses relieve the insurance carrier of liability for payment where the policy holder has no legal obligation to pay or where the care is provided in a government facility, notwithstanding the fact that the insurance carrier would have provided reimbursement for the cost of care for the same individual if that care were provided in a nongovernmental hospital. [The legislation] would assert the government's authority to collect for the cost of such care notwithstanding any exclusionary clauses that might be included in the policy.

H. Rept. No. 99–300, 99th Cong., 1st Sess., 8–9.

No obligation to pay. An example of the second general rule stated above is a provision in a third party payer's plan that purports to disallow payment when the beneficiary has no legal obligation to pay. Our interpretation that such an exclusion is impermissible is based on the statutory wording (in 10 U.S.C. 1095(a)(1)) that the government's right to collect is to the extent the beneficiary would receive reimbursement "if the person were to incur such costs on the person's own behalf." A basic statutory characteristic of the military health services system is that beneficiaries have no obligation to pay (except nominal amounts called for by law). Recognizing this, Congress specifically expressed the government's right to collect in terms to make clear that it should be considered as if the beneficiary has an obligation to pay. Thus, it is our interpretation that the fact that the beneficiary has no actual obligation to pay has been made expressly irrelevant by 10 U.S.C. 1095. This is an example of a provision that would defeat the clear statutory purpose of 10 U.S.C. 1095. The same conclusion applies to any similar exclusion expressed in slightly different words,

such as that no charge would be made if the person had no health insurance.

Exclusion of military beneficiaries. An example of the third general rule is a provision in an employer sponsored health plan which purports to make ineligible for coverage individuals who are military health care beneficiaries. Such an exclusion would clearly have the effect of treating facilities of the uniformed services less favorably than other hospitals.

No participation agreement. An example of the fourth general rule is a provision in a third party payer's plan that would exclude payment to a hospital that has no participation agreement with the third party payer. Prior to the issuance of our original part 220, the issue arose of whether a third party payer could insist that as a precondition to payment under 10 U.S.C. 1095, the facility of the uniformed services must enter into a participating provider agreement with the third party payer. DoD Instruction 6010.15 (the present 32 CFR part 220, paragraph 220.4(c)) addressed this issue:

> Participating hospital agreements are premised on compliance with State and local laws and regulations by a State nonprofit health care corporation. Since Federal entities are governed by Federal statutes and regulations, the Department of Defense medical treatment facilities should not enter into local participating hospital agreements.

Consistent with this, paragraph 220.3(c)(4) states that the lack of a participation agreement or the absence of a specific contractual relationship (often referred to as "privity of contract") between a third party payer and a facility of the uniformed services is not a permissible ground for refusing payment under 10 U.S.C. 1095. This is an example of the general rule that disallows preconditions that are.) inconsistent with the basic nature of facilities of the uniformed services. (We note that some facilities of the uniformed services have understandings with some third party payers concerning claims procedures and the like for the purpose of facilitating smooth administration. Such understandings would not offend our proposed rule as long as they do not purport to be preconditions to complying with statutory and regulatory reguirements, rather than instruments to facilitate compliance.)

D. Reasonable Terms and Conditions of the Plan Permissible (Proposed § 220.4).

Proposed § 220.4 attempts to describe the flip side of § 220.3. Whereas that section discusses impermissible exclusions, this section describes reasonable terms and conditions of the third party payer s plan that are permissible. We invite comment on other general rules and other examples interested parties think would be helpful, in addition to comments on the text of the proposed rule.

1. Statutory Requirement.

As mentioned above, 10 U.S.C. 1095 defines its applicability "to the extent that" the third party payer would pay the patient if the patient incurred the costs personally. This is the starting point for the concept that under the statute, third party payers are permitted to apply to inpatient hospital care provided in facilities of the uniformed services reasonable terms and conditions of the plan. Thus, this point is reiterated in paragraph 220 4(a).

2. General rules.

As in the last section, several general rules would appear to aid application of the statute to particular factual situations. The first general rule is that, after impermissible exclusions have been eliminated, reasonable terms that apply generally and uniformly to services provided in all facilities may be applied to facilities of the uniformed services. A key concept embodied in this general rule is that the terms and conditions apply generally and uniformly.

The basic statutory principle can also be restated in terms similar to one of the general rules on exclusions. As stated in § 220.3, facilities of the uniformed services may not be treated less favorably than other hospitals. The flip side of that is that third party payers need not treat facilities of the uniformed services more favorably than other hospitals. This is stated as a second general rule for identifying permissible terms and conditions.

3. Example of Permissible Terms and Conditions.

Paragraph 220.4(c) lists three examples of permissible terms and conditions.

Coverage provisions. Under 10 U.S C. 1095, if there are certain types of medical care or certain medical services that are not covered by the third party payer's plan, such services provided by a military treatment facility need not be reimbursed by the third party payer. The third party payer is not required to accord military hospitals more favorable treatment than is provided to all other hospitals under the terms of the third party payer's program or plan. For example, if psychiatric care is excluded from a third party payer s plan, the payer is not required to provide third party payment for psychiatric care provided in a facility of the uniformed services.

Utilization review activities. Utilization review activities can be more subtle and complicated. An increasingly common feature of health plans is the incorporation of mechanisms, adopted in recognition of concerns regarding both costs and quality of care, to avoid unnecessary services. Such utilization review mechanisms include preadmission screening, concurrent review, second surgical opinions, retrospective review, and other activities. These mechanisms typically include some payment consequences, such as a total or partial denial of a claim, for deviations from the specified requirements.

The statute does not disallow reasonable utilization review activities. The legislative history discussed utilization review activities:

> The right to collect could be asserted only to the extent that the benefits were covered by the insurance plan and would be subject to the terms and conditions of the plan * * * [T]o the extent that insurance plans have conditions that require, for example, pre-admission screening and second opinions before surgery, the Department of Defense would be expected to comply in order to collect under those contracts.
> H. Rept. 99–300, page 9.

Based on these points, paragraph 220.4(c)(2) states our interpretation that the statute does not require a third party payer to reimburse facilities of the uniformed services in a manner contrary to the payer's generally applicable utilization review program. It may be that in some cases the military facility will, due to staffing levels, established administrative procedures, provider practices, patient expectations or other reasons, provide health care services without regard to a third party payer's utilization review procedures. In such cases, the payer is allowed to follow the terms of the plan. For example, if a third party payer's plan requires preadmission certification and reduces from 100 percent to 50 percent the amount of charges that will be reimbursed in any case in which a nonemergency admission was not precertified, an admission to a facility of the uniformed services not precertified may be reimbursed at the reduced 50 percent rate. However, in this example, the request for payment from the facility of the uniformed services may not be reduced to any greater extent than is specified under the generally applicable utilization review program.

Exclusions in Health Maintenance Organization (HMO) plans. Paragraph 220.4(c)(3) lists another example of the

general rules regarding permissible terms and conditions: generally applicable restrictions in health maintenance organization plans of nonemergency services provided outside the HMO are permissible. The legislative history of 10 U.S.C. 1095 indicates how this general rule applies in the context of an HMO plan. The House Committee Report states:

> * * * [P]rivate insurers would not be liable for services that are not covered by their policies. Similarly, in recognition of the unique nature of health maintenance organizations, collection from a health maintenance organization of the reasonable cost of care provided at military medical facilities would be undertaken only when the care is covered emergency care as defined in the health maintenance organization's contract.
> H. Rept. 99-300, page 10.

It is our interpretation of 10 U.S.C. 1095 that it requires payment by HMO plans only to the extent those HMO plans generally cover services (e.g., emergencies) provided by health care facilities not affiliated with the HMO.

E. Records Available (Proposed § 220.5).

In proposed section 220.5, we restate the requirement of 10 U.S.C. 1095(c) that facilities of the uniformed services will make available, upon request, to representatives of third party payers health care records of the patients regarding whose care payment is sought under 10 U.S.C. 1095. The records that will be made available are those necessary to verify that the services were provided and that permissible terms and conditions of the plan were met.

F. Certain payers excluded (Proposed § 220.6)

Proposed § 220.6 identifies certain third party payers that are excused from any obligation under 10 U.S.C. 1095.

1. Medicare and Medicaid

Proposed paragraph 220.6(a) restates the rule of 10 U.S.C. 1095(d), which specifically excludes the Medicare and Medicaid programs from the reach of 10 U.S.C. 1095.

2. Supplemental plans.

Proposed paragraph 220.6(b) establishes our interpretation that Medicare and CHAMPUS supplemental insurance programs and income supplemental plans are not covered by 10 U.S.C. 1095. Concerning Medicare supplemental plans, the essential character of these plans is that they are secondary to Medicare. They define themselves and their coverages, limitations, terms and conditions as functions of the underlying Medicare program to which they are supplements. Because Congress specifically excluded Medicare, it appears to be the most reasonable view that the closely related Medicare supplemental plans should also be determined to be outside Congress' intended reach of 10 U.S.C. 1095. To attempt to deal with Medicare supplemental policies as freestanding and independent of Medicare does not appear appropriate.

Analogous to this, we believe CHAMPUS supplemental policies should also be viewed, as is indicated in our current part 220, as beyond the reach of 10 U.S.C. 1095. One of the basic attributes of CHAMPUS is that Congress intended that it be in many respects secondary to care in facilities of the uniformed services. This is indicated, for example, by the requirement of 10 U S.C. 1079(a)(7) that hospital care generally be obtained from facilities of the uniformed services before looking to CHAMPUS. CHAMPUS supplemental policies are, in turn, secondary to CHAMPUS. To hold these supplemental policies liable for care provided in facilities of the uniformed services would be a fundamental change in the common understanding of the nature of these policies. Thus, paragraph 220.6(b) states our interpretation that Medicare and CHAMPUS supplemental insurance policies are excluded from 10 U.S.C. 1095.

3. Third Party Plans Prior to April 7, 1986

In enacting 10 U.S.C. 1095, Congress made it applicable "only with respect to an insurance, medical service, or health plan agreement entered into, amended, or renewed on or after the date of enactment" of the statute. Pub. L. 99-272, section 2001(b). Proposed paragraph 220.6(c) restates this requirement.

G. Remedies (Proposed § 220.7)

Proposed § 220.7 pertains to remedies relating to the right to the United States to collect under 10 U.S.C. 1095. Proposed paragraph 220.7(a) restates the authority of 10 U.S.C. 10 U.S.C. 1095(e)(1) for the United States to institute legal proceedings against a third party payer to enforce a right of the United States. Section 220.7(b) restates the authority of 10 U.S.C. 1095(e)(2) for an authorized representative of the United States to compromise, settle or waive a claim under 10 U.S.C. 1095. Paragraph 220.7(c) states that authorities provided by 32 CFR part 90 regarding collection of indebtedness due the United States shall be available to effect collections pursuant to 10 U.S.C. 1095. These authorities include administrative offset and other means to collect.

H. Reasonable Costs (Proposed § 220.8)

Section 220.8 of the proposed rule pertains to the computation of reasonable costs. 10 U.S.C. 1095(f) states that the Department of Defense's regulations "shall provide for the computation of the reasonable cost of inpatient hospital care" and that this computation may be based on per diem rates or other appropriate method.

1. Per Diem Rates

Proposed paragraph 220.8(a) states that per diem rates will be used. It further states that the per diem rates will be subdivided into three categories: hospital charges, physician charges and ancillary charges. This provision is unchanged from our current instruction.

2. Medical Services and Subsistence Charges Included.

Another issue that the Inspector General will recommend be clarified relates to the treatment of the relatively nominal medical services charges and subsistence charges which patients in facilities of the uniformed services are required to pay under 10 U.S.C. 1075 and 1078. We propose to provide that clarification in paragraph 220.8(b) by stating that these charges are included in the per diem rate. This means that in cases identified for action to recover under 10 U.S.C. 1095, facilities of the uniformed services will not collect the medical services or subsistence charges from the beneficiary. As a result, third party payers will know that the claim made pursuant to 10 U.S.C. 1095 will (with the exception of Partnership Program cases, discussed below) satisfy all of the third party payer's obligations arising from the inpatient hospital care provided by the facility of the uniformed services on that occasion. This also conforms with the positions reflected in proposed paragraph 220.2 (c) and (d) and discussed above that payment must be made to the authorized representative of the United States and that no assignment of benefits form is needed.

3. Alternative Determination of Reasonable Costs

Proposed paragraph 220.8(c) implements the direction contained in the Conference Committee report pertaining to the enactment of 10 U.S.C. 1095 that any third party payer that can demonstrate prevailing rates of payment less than those established by the Department of Defense should be able to have the lower rates apply. H. Conf. Rept. 99-453, p. 394.

4. Special Rule for Partnership Program

Proposed paragraph 220.8(d) would establish an exception to the usual rule that payment of the claim from the facility to the uniformed services will satisfy all of the third party payer's obligations arising from the inpatient care on that occasion. This exception is necessary because in cases covered by the Partnership Program (or similar program under the authority of 10 U.S.C. 1096), the professional services portion of the total inpatient care is not provided by the facility of the uniformed services, but is provided by CHAMPUS. The Partnership Program permits military hospital commanders to allow private sector health care providers who are CHAMPUS authorized to come into the military hospital to provide care to CHAMPUS beneficiaries. In connection with inpatient services, the hospital services and ancillary services are provided by the military hospital, with the physician fee the responsibility of CHAMPUS. Combining the two activities allows the inpatient services to be provided more economically.

Because the professional services in Partnership Program cases are not provided by the military hospital, charges related to them are not covered by the third party collection program of 10 U.S.C. 1095 and this part. Rather, they are covered by the statutory and regulatory requirements of the CHAMPUS program. These requirements include the rule that CHAMPUS is secondary payer to other insurance and health plans (except Medicare), under 10 U.S.C. 1079(j)(f). Based on these CHAMPUS requirements, in cases (which will be quite infrequent) in which inpatient care provided in a military hospital included professional services provided under the Partnership Program, a third party payer will receive two claims: one from the military hospital, which will exclude the physician fee portion of the per diem rate, and one from the individual health care provider.

I. Rights and Obligations of Beneficiaries (Proposed § 220.9)

Proposed § 220.9 establishes several rights and obligations of beneficiaries arising from or pertaining to 10 U.S.C. 1095.

1. No Additional Cost Share

Proposed paragraph 220.9(a) implements the requirement of 10 U.S.C. 1095(a)(2) of the statute that the beneficiaries will not be required to pay to the facility of the uniformed services any amount greater than the normal medical services charges (applicable to dependents) or subsistence charges (applicable to retirees). This provision states that in cases in which payment is collected from the third party payer, it will be considered as satisfying the medical services or subsistence charges the beneficiary would be required to pay if no third party payment were made. Thus, no further payment by the beneficiary to the facility of the uniformed services will be required. We are aware that the Department of Defense has authority to require beneficiaries to pay all or some of their normal charges in any case in which the third party payer, because of a deductible or copayment requirement in the plan, pays less than the full amount of the per diem charges. However, because the third party payer collection will almost certainly exceed the normal medical services or subsistence charges and in order to avoid administrative complexity, we feel it preferable to adopt a rule that considers the third party payment as satisfying the normal dependents' medical services charges or retirees subsistence charges.

2. Availability of Hospital Care Unaffected

Proposed paragraph 220.9(b) states that whether or not a beneficiary is covered by a third party payer's plan will not be considered in a decision on admitting a beneficiary for hospital care in a facility of the uniformed services. Whether or not to admit a beneficiary for hospital care is based on medical need and the availability of needed facilities and personnel at the particular facility; the potential or lack of potential for third party payment is irrelevant to the issue of admission.

3. Obligation To Disclose Information

Proposed paragraph 220.9(c) states that beneficiaries have an obligation to provide accurate information to the facility of the uniformed services regarding whether the beneficiary is covered by a third party payer plan. We believe such an obligation is fully in keeping with the intent of Congress in 10 U.S.C. 1095 that the United States collect from third party payers the reasonable cost of hospital care provided by facilities of the uniformed services. Because facilities of the uniformed services are dependent upon the information provided by beneficiaries in order to carry out the mandate of 10 U.S.C. 1095, it is imperative that beneficiaries provide accurate information. The proposed paragraph states that intentionally providing false information or other willful failure on the part of a beneficiary to satisfy this obligation is grounds for disqualification for health care services from facilities of the uniformed services.

J. Definitions (Proposed § 220.10)

Proposed § 220.10 defines several key terms used in part 220.

1. Facility of the Uniformed Services

Proposed paragraph 220.10(a) states that a facility of the uniformed services is any medical or dental treatment facility of the Army, Navy, Air Force, Marine Corps, Coast Guard, the commissioned corps of the National Oceanic and Atmospheric Administration and the commissioned corps of the Public Health Service. Also, by statutory directive, facilities of the uniformed services include each former Public Health Service facility which is "deemed to be a facility of the uniformed services for the purposes of chapter 55 of title 10, United States Code" pursuant to section 911 of Pub. L. 97-99 (often referred to as "Uniformed Services Treatment Facilities" or "USTFs").

2. Inpatient Hospital Care

Proposed paragraph 220.10(b) defines inpatient hospital care in the same manner as does our existing regulation.

3. Insurance Plan

Proposed paragraph 22.10(c) defines insurance plan in the same manner as does our existing regulation.

4. Medical Services or Health Plan

Proposed paragraph 220.10(d) defines medical service or health plan in the same manner as does our current Instruction.

5. Medicare and CHAMPUS Supplemental Plan

Proposed paragraph 220.10(e) defines a Medicare or CHAMPUS supplemental plan as a plan exclusively for the purpose of supplementing an eligible person's benefit under Medicare or CHAMPUS. This provision also states that no employer-sponsored plan may be a supplemental plan. For readers not familiar with CHAMPUS, it is the Civilian Health and Medical Program of the Uniformed Services. The CHAMPUS regulation is at 32 CFR part 199.

6. Third Party Payer

Proposed paragraph 220.10(f) defines third party payer in the same way as does our current Instruction. This definition is consistent with the statutory definition at 10 U.S.C. 1095(g).

7. Third Party Payer Plan.

Proposed paragraph 220.10(g) defines a third party payer plan as any

insurance or medical service or health plan provided by a third party payer.

8. Uniformed Services Beneficiary

Proposed paragraph 220.10(h) defines uniformed services beneficiary for purposes of this part as any person who is covered by 10 U.S.C. 1074(b) (retired members), 1076(a) (dependents of active duty members), and 1076(b) (dependent of retired member or survivor). For purposes of this part, a uniformed services beneficiary does not include active duty members of the uniformed services.

III. Regulatory Procedures.

A. Public Comments

In the discussion above, we noted our interest in public comment on all matters covered by this proposed rule. Additionally, we would welcome comments or questions on any other aspect of the 10 U.S.C. 1095 program. We will attempt to address comments in connection with the final rule, which we expect to publish approximately 30 days after the end of the comment period.

B. Executive Order 12291 and the Regulatory Flexibility Act

This proposed rule is not a major rule under Executive Order 12291. It does not have an impact of $100 million or other significant economic impacts. Similarly, the proposed rule does not significantly impact a substantial number of small entities within the meaning of the Regulatory Flexibility Act. As noted above, for the most part, this rule provides the Department of Defense's interpretations of current statutory requirements, guidelines for applying the statute and basic procedures for implementation. This proposed rule does not create new regulatory burdens that will have economic impacts of the type covered by these regulatory review authorities.

List of Subjects in 32 CFR Part 220

Claims, Health insurance, Health records, Military personnel.

For the reasons stated in the preamble, 32 CFR part 220 is proposed to be revised to read as follows:

PART 220—COLLECTION FROM THIRD PARTY PAYERS OF REASONABLE HOSPITAL COSTS

Sec.

Authority: 10 U.S.C. section 1095; 5 U.S.C. section 301.

§ 220.1 Purpose and applicability.

This part implements the provisions of 10 U.S.C. 1095. In general, 10 U.S.C. 1095 establishes the statutory obligation of third party payer health plans to reimburse the United States the reasonable costs of inpatient hospital care provided by facilities of the uniformed services to most the Department of Defense medical care beneficiaries who are also participants in the third party payer's health plan. This part establishes the Department of Defense interpretations and requirements applicable to all health care services subject to 10 U.S.C. 1095.

§ 220.2 Statutory obligation of third party payer to pay.

(a) *Basic rule.* Pursuant to 10 U.S.C. 1095(a)(1), a third party payer has an obligation to pay the United States the reasonable costs of inpatient hospital care provided in any facility of the uniformed services to a uniformed services beneficiary who is also a beneficiary under the third party payer's plan. The obligation to pay is to the extent that the beneficiary would be eligible to receive reimbursement or indemnification from the third party payer if the beneficiary were to incur the costs on the beneficiary's own behalf.

(b) *Application of cost shares.* If the third party payer's plan includes a requirement for a deductible or copayment by the beneficiary of the plan, then the amount the United States may collect from the third party payer is the reasonable cost of the care provided less the appropriate deductible or copayment amount.

(c) *Claim from United States exclusive.* The only way for a third party payer to satisfy its obligation under 10 U.S.C. 1095 is to pay the uniformed services treatment facility or other authorized representative of the United States. Payment by a third party payer to the beneficiary does not satisfy 10 U.S.C. 1095.

(d) *Assignment of benefits not necessary.* The obligation of the third party payer to pay is not dependent upon the beneficiary executing an assignment of benefits to the United States.

§ 220.3 Exclusions impermissible.

(a) *Statutory requirement.* Under 10 U.S.C. 1095(b), no provision of any third party payer's plan having the effect of excluding from coverage or limiting payment for certain care if that care is provided in a facility of the uniformed services shall operate to prevent collection by the United States.

(b) *General rules.* Based on the statutory requirement, the following are general rules for the administration of 10 U.S.C. 1095 and this part.

(1) Express exclusions or limitations in third party payer plans that are inconsistent with 10 U.S.C. 1095(b) are inoperative.

(2) No objection, precondition or limitation may be asserted that defeats the statutory purpose of collecting from third party payers.

(3) Third party payers may not treat claims arising from services provided in facilities of the uniformed services less favorably than they treat claims arising from services provided in other hospitals.

(4) No objection, precondition or limitation may be asserted that is contrary to the basic nature of facilities of the uniformed services.

(c) *Specific examples of impermissible exclusion.* The following are several specific examples of impermissible exclusions, limitations or preconditions. These examples are not all inclusive.

(1) *Care provided by a government entity.* A provision in a third party payer's plan that purports to disallow or limit payment for services provided by a government entity or paid for by a government program (or similar exclusion) is not a permissible ground for refusing or reducing third party payment.

(2) *No obligation to pay.* A provision in a third party payer's plan that purports to disallow or limit payment for services for which the patient has no obligation to pay (or similar exclusion) is not a permissible ground for refusing or reducing third party payment.

(3) *Exclusion of military beneficiaries.* No provision of an employer sponsored program or plan that purports to make ineligible for coverage individuals who are the Department of Defense health care beneficiaries shall be permissible.

(4) *No participation agreement.* The lack of a participation agreement or the absence of privity of contract between a third party payer and a facility of the uniformed services is not a permissible ground for refusing or reducing third party payment.

§ 220.4 Reasonable terms and conditions of health plan permissible.

(a) *Statutory requirement.* The statutory obligation of the third party to pay is not unqualified. Under 10 U.S.C. 1095(a)(1) (as noted in § 220.2 of this part), the obligation to pay is to the extent the third party payer would be obliged to pay if the beneficiary incurred the costs personally.

(b) *General rules.* (1) Based on the statutory requirement, after any impermissible exclusions have been made inoperative (see § 220.3 of this part), reasonable terms and conditions of the third party payer's plan that apply generally and uniformly to services provided in facilities other than facilities of the uniformed services may also be applied to services provided in facilities of the uniformed services.

(2) Third party payers are not required to treat claims arising from services provided in facilities of the uniformed services more favorably than they treat claims arising from services provided in other hospitals.

(c) *Specific examples of permissible terms and conditions.* The following are several specific examples of permissible terms and conditions of third party payer plans. These examples are not all inclusive.

(1) *Generally applicable coverage provisions.* Generally applicable provisions regarding particular types of medical care or medical conditions covered by the third party payer's plan are permissible grounds to refuse or limit third party payment.

(2) *Generally applicable utilization review provisions.* Generally applicable provisions of the third party payer's plan requiring preadmission screening, second surgical opinions, retrospective review or other similar utilization review activities are permissible grounds to refuse or reduce third party payment if such refusal or reduction is required by the third party payer's plan. Such provisions, however, may not be applied in a manner that would result in claims arising from services provided by facilities of the uniformed services being treated less favorably than claims arising from services provided by other hospitals.

(3) *Restrictions in HMO plans.* Generally applicable exclusions in Health Maintenance Organization (HMO) plans of nonemergency services provided outside the HMO (or similar exclusions) are permissible.

§ 220.5. Records available.

Pursuant to 10 U.S.C. 1095(c), facilities of the uniformed services, when requested, shall make available to representatives of any third party payer from which the United States seeks payment under 10 U.S.C. 1095 for inspection and review appropriate health care records (or copies of such records) of individuals for whose care payment is sought. Appropriate records which will be made available are records which document that the services which are the subject of the claims for payment under 10 U.S.C. 1095 were provided as claimed and were provided in a manner consistent with permissible terms and conditions of the third party payer's plan. This is the sole purpose for which patient care records will be made available. Records not needed for this purpose will not be made available.

§ 220.6. Certain payers excluded.

(a) *Medicare and Medicaid.* Under 10 U.S.C. 1095(d), claims for payment from the Medicare or Medicaid programs (titles XVIII and XIX of the Social Security Act) are not authorized.

(b) *Supplemental plans.* Medicare and CHAMPUS (see 32 CFR part 199) supplemental plans and income supplemental plans are excluded from any obligation to pay under 10 U.S.C. 1095.

(c) *Third party payer plans prior to April 7, 1986.* 10 U.S.C. 1095 is not applicable to third party payer plans which have been in continuous effect without amendment or renewal since prior to April 7, 1986. Plans entered into, amended or renewed on or after April 7, 1986, are subject to 10 U.S.C. 1095.

§ 220.7. Remedies.

(a) Pursuant to 10 U.S.C. 1095(e)(1), the United States may institute and prosecute legal proceedings against a third party payer to enforce a right of the United States under 10 U.S.C. 1095 and this part.

(b) Pursuant to 10 U.S.C. 1095(e)(2), an authorized representative of the United States may compromise, settle or waive a claim of the United States under 10 U.S.C. 1095 and this part.

(c) The authorities provided by 32 CFR part 90 regarding collection of indebtedness due the United States shall also be available to effect collections pursuant to 10 U.S.C. 1095 and this part.

§ 220.8. Reasonable costs.

(a) *Per diem rates.* As authorized by 10 U.S.C. 1095(f)(1), the computation of reasonable costs for purposes of collections under 10 U.S.C. 1095 and this part shall be based on per diem rates. The per diem charge shall be equal to the inpatient full reimbursement rate. Per diem rates shall be updated and published annually. For purposes of billing third party payers, per diem rates shall be subdivided into three categories:

(1) Hospital charges.

(2) Physician charges.

(3) Ancillary charges.

(b) *Medical services and subsistence charges included.* Medical services charges pursuant to 10 U.S.C. 1078 or subsistence charges pursuant to 10 U.S.C. 1075 are included in the claim filed with the third party payer pursuant to 10 U.S.C. 1095. For any patient of a facility of the uniformed services who indicates that he or she is a beneficiary of a third party payer plan, the usual medical services or substance charge will not be collected from the patient. Thus, except in cases covered by paragraph (d) of this section, payment of the claim made pursuant to 10 U.S.C. 1095 will satisfy all of the third party payer's obligation arising from the inpatient hospital care provided by the facility of the uniformed services on that occasion.

(c) *Alternative determination of reasonable costs.* Any third party payer that can satisfactorily demonstrate a prevailing rate of payment in the same geographic area for the same or similar services that is less than the per diem rate of the facility of the uniformed services may, with the agreement of the facility of the uniformed services (or other authorized representative of the United States), limit payments under 10 U.S.C. 1095 to that prevailing rate. The determination of the third party payer's prevailing rate shall be based on a review of valid contractual arrangements with other facilities or providers constituting a majority of the services for which payment is made under the third party payer's plan.

(d) *Special rule for Partnership Program providers.* (1) In cases in which the professional provider services are provided under the Partnership Program (or similar program operated under the authority of 10 U.S.C. 1096), the physician charges component of the total per diem rate will be deleted from the claim from the facility of the uniformed services.

(2) The third party payer will receive a claim for professional services directly from the individual health care provider, who is not an employee or agent of the Department of Defense. Such claims are not covered by 10 U.S.C. 1095 or this part, but are governed by statutory and regulatory requirements of the CHAMPUS program (see 32 CFR part 199).

§ 220.9 Rights and obligations of beneficiaries.

(a) *No additional cost share.* Pursuant to 10 U.S.C. 1095(a)(2), uniformed services beneficiaries will not be required to pay to the facility of the uniformed services any amount greater than the normal medical services or subsistence charges (under 10 U.S.C. 1075 or 1078). In every case in which payment from a third party payer is received, it will be considered as satisfying the normal medical services or subsistence charges, and no further payment from the beneficiary will be required.

(b) *Availability of hospital care unaffected.* The availability of health care services in any facility of the uniformed services will not be affected by the participation or nonparticipation of a uniformed services beneficiary in a health care plan of a third party payer. Whether or not a uniformed services beneficiary is covered by a third party payer's plan will not be considered in determining the availability of hospital care in a facility of the uniformed services.

(c) *Obligation to disclose information.* Uniformed services beneficiaries are required to provide correct information to the facility of the uniformed services regarding whether the beneficiary is covered by a third party payer's plan. Intentionally providing false information or otherwise willfully failing to satisfy this obligation are grounds for disqualification for health care services from facilities of the uniformed services.

§ 220.10 Definitions.

(a) *Facility of the uniformed services.* A facility of the uniformed services means any medical or dental treatment facility of the uniformed services (as that term is defined in 10 U.S.C. 101(43)). Facilities of the uniformed services also include the several former Public Health Services facilities that are deemed to be facilities of the uniformed services pursuant to section 911 of Public Law 97-99 (often referred to as "Uniformed Services Treatment Facilities" or "USTFs").

(b) *Inpatient hospital care.* Treatment provided to an individual other than a transient patient, who is admitted (i.e., placed under treatment of observation) to a bed in a facility of the uniformed services that has authorized beds for inpatient medical or dental care.

(c) *Insurance plan.* Any plan or program that is designed to provide compensation or coverage for expenses incurred by a beneficiary for medical services and supplies. It includes plans or programs for which the beneficiary pays a premium to an issuing agent as well as those plans or programs to which the beneficiary is entitled as a result of employment or membership in, or association with, an organization or group.

(d) *Medical service or health plan.* A medical service or health plan is any plan or program of an organized health care group, corporation or other entity for the provision of health care to an individual from plan providers, both professional and institutional. It includes plans or programs for which the beneficiary pays a premium to an issuing agent as well as those plans or programs to which the beneficiary is entitled as a result of employment or membership in, or association with, an organization or group.

(e) *Medicare and CHAMPUS supplemental plan.* A Medicare or CHAMPUS supplemental plan (referred to in § 220.6(b) of this part is an insurance, medical service or health plan exclusively for the purpose of supplementing an eligible person's benefit under Medicare or CHAMPUS. (For information concerning CHAMPUS, see 32 CFR part 199.) No insurance, medical service or health plan provided by an employer or employer group may qualify as a Medicare or CHAMPUS supplemental plan.

(f) *Third party payer.* A third party payer is an entity that provides an insurance, medical service or health plan by contract or agreement. It includes state and local governments that provide such plans. It includes insurance underwriters and private employers (or employer groups) offering self-insured or partially self-insured and/or partially underwritten health insurance plans.

(g) *Third party payer plan.* A third party payer plan is any insurance or medical service or health plan provided by a third party payer. It does not include any income supplemental plan.

(h) *Uniformed services beneficiary.* For purposes of this part, a uniformed services beneficiary is any person who is covered by 10 U.S.C. 1074(b), 1076(a) or 1076(b). (Note that for purposes of this part, uniformed services beneficiaries do not include active duty members of the uniformed services.)

Dated: January 9, 1990.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-904 Filed 1-12-90; 8:45 am]

BILLING CODE 3810-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-616, RM-7018]

Radio Broadcasting Services; Panama City Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Winstanley Broadcasting, Inc., requesting the substitution of Channel 261C3 for Channel 261A at Panama City Beach, Florida, and modification of its license for Station WPCF(FM) to specify the higher powered channel. Channel 261C3 can be allotted to Panama City Beach in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.5 kilometers (9.6 miles) southeast. The coordinates for this allotment are North Latitude 30-06-32 and West Longitude 85-39-56. In accordance with § 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in the higher powered channel at Panama City Beach or require the petitioner to demonstrate the availability of an additional equivalent channel for use by interested parties.

DATES: Comments must be filed on or before March 1, 1990, and reply comments on or before March 16, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Cary S. Tepper, Putbrese, Hunsaker & Ruddy, 6800 Fleetwood Road, P.O. Box 539, McLean, Virgina 22101, (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-616, adopted December 18, 1989, and released January 8, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-958 Filed 1-12-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-615, RM-6567]

Radio Broadcasting Services; Summerland Key, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Summerland Key Communications Partnership, seeking the substitution of Channel 273C2 for Channel 275A at Summerland Key, Florida, and modification of its construction permit for Station WPIK(FM), to specify operation on the higher class channel. Channel 273C2 can be allotted to Summerland Key in compliance with the Commission's minimum distance separation requirements at the construction permit site. The coordinates for this allotment are North Latitude 24-40-05 and West Longitude 81-30-05. In accordance with § 1.420(g) of the Commission's Rules, competing expressions of interest in use of Channel 273C2 at Summerland Key will not be considered and petitioner will not be required to demonstrate the availability of an additional equivalent channel for use by such interested parties.

DATES: Comments must be filed on or before March 1, 1990, and reply comments on or before March 16, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Martin E. Firestone, Mark N. Lipp, Mullins, Rhyne, Emmons & Topel, P.C., 1000 Connecticut Avenue, NW., Suite 500, Washington, DC 20036, (Attorneys for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-615, adopted December 18, 1989, and released January 8, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-957 Filed 1-12-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-617, RM-6285]

Radio Broadcasting Services; Tavernier, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Linda U. Kulisky, proposing to allot Channel 245A to Tavernier, Florida, as its first local FM service. The coordinates for this allotment are North Latitude 25-00-36 and West Longitude 80-31-06.

DATES: Comments must be filed on or before March 1, 1990, and reply comments on or before March 16, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554 In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Linda U. Kulisky, Coral Harbour Club C-43, 88181 U.S. Highway 1, Islamorada, FL 33036.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM docket No. 89-617, adopted December 18, 1989, and released January 8, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-959 Filed 1-12-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-43; RM-6549]

Radio Broadcasting Services; Aberdeen, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: This document dismisses a petition filed by Pioneer Broadcasting Company, Inc., licensee of Station KDUX(FM) at Aberdeen, Washington, proposing the substitution of Channel 284C for Channel 284C2 at Aberdeen, and the modification of its license accordingly, at the request of the petitioner. *See* 54 FR 8767, March 2, 1989. With this action, this proceeding is terminated.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–43, adopted December 14, 1989 and released January 8, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–960 Filed 1–12–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–614, RM–7136]

Radio Broadcasting Services; Brookston and Monticello, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Nu-View Associates, Inc., licensee of Station WKJM(FM), Channel 237A, Monticello, Indiana, seeking to change the community of license for Channel 237A from Monticello to Brookston, Indiana, and to modify its license accordingly. Coordinates used for this proposal are 40–40–57 and 86–51–34.

DATES: Comments must be filed on or before March 1, 1990, and reply comments on or before March 16, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Alan C. Campbell, Esq., Dow, Lohnes & Albertson, 1255-23d St., NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–614 adopted December 18, 1989, and release January 8, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–961 Filed 1–12–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–613, RM–7027]

Radio Broadcasting Services; Seelyville, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed on behalf of Victory Christian Center, seeking the allotment of FM Channel 240A to Seelyville, Indiana, as that community's first local broadcast service. Coordinates for this proposal are 39–29–50 and 87–17–21.

DATES: Comments must be filed on or before March 1, 1990, and reply comments on or before March 16, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Victory Christian Center, Attn: Larry G. Riley, Senior Pastor, 9400 Wabash Avenue, Terre Haute, IN 47803.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–613, adopted March 1, 1989, and released March 16, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve—channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–962 Filed 1–12–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 76

[MM Docket No. 89–600]

Cable Hearings

AGENCY: Federal Communications Commission.

ACTION: Notice; public hearing.

SUMMARY: The Federal Communications Commission will hold three field hearings as part of its comprehensive study on the status of the cable industry's operations since enactment of the Cable Communications Policy Act of 1984.

DATES: February 12, 1990, March 2, 1990, and one date to be announced later.

ADDRESSES: The first hearing will be held in Los Angeles, California at City Hall, 200 North Spring Street. The locations of the hearings in Orlando, Florida and St. Louis, Missouri will be announced later. Parties wishing to make oral presentations at the first hearing should submit written requests by close-of-business, Tuesday, January 16, 1990 to the Office of Plans and Policy, FCC, 1919 M Street, NW., Room 822, Washington, DC 20554, Attention Jim Hudgens.

Any filings should be directed to Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jim Hudgens, Office of Plans and Policy, (202) 653–5940 or Michelle Farquar, Office of General Counsel (202) 632–7020 for information about the hearings and Lorrie Secrest at (202) 632–5050 for media coverage.

SUPPLEMENTARY INFORMATION: On January 3, 1990, the Commission released the following Public Notice notifying the public of the dates and locations of the three field hearings that are being held as part of the Commission's study on the status of the cable industry's operations, as well as the procedures to be followed for the first hearing if parties wish to make oral presentations. In addition, the notice states the dates for comments and reply comments to be filed in the Commission's pending *Notice of Inquiry* [1] in MM Docket No. 89–600, FCC 89–345 (released December 29, 1989).

Robert L. Pettit,

General Counsel.

The Federal Communications Commission announced on December 29, 1989, that it will convene three field hearings as part of its comprehensive study on the status of the cable industry's operations since enactment of the Cable Communications Policy Act of 1984. *See Notice of Inquiry* in MM Docket No. 89–600, FCC 89–345 (released December 29, 1989) ("*Cable Inquiry*"). These hearings will be in Los Angeles, California on February 12, 1990; Orlando, Florida on March 2, 1990; and St. Louis, Missouri (date to be announced).

The first of these hearings is scheduled for Monday, February 12, 1990, at City Hall, 200 North Spring Street, Los Angeles, from 9:30 a.m. until no later than 5:30 p.m. The focus of the Los Angeles hearing will be the impact of the Cable Act of 1984 and subsequent cable TV developments on program supply and the production community. In addition, we will seek comment on related cable matters from local, state, and federal officials and other interested parties. Among general cable matters, the Orlando hearing will address the state of competition to cable and the future direction of cable technology, and the St. Louis hearing will address the impact of the Cable Act on local cable regulation, including city/cable relations and service quality.

Parties wishing to make oral presentations at the first hearing should submit written requests by close-of-business, Tuesday, January 16, 1990, to the Office of Plans and Policy, FCC, 1919 M Street, NW., Room 822, Washington, DC 20554, Attention: Jim Hudgens. Such requests should clearly identify the speaker, the organization represented (if any), experience and training relevant to the issues to be discussed, particularly as they relate to the cable TV industry and the Commission's pending *Cable Inquiry*, and the specific topic or topics to be discussed. Depending on the number of requests, it may be necessary to limit the number of presenters. If so, we will endeavor to select speakers for the hearing so as to obtain a broad and informed viewpoint. In order to allow time for oral discussion and dialogue, presentations will be limited to five minutes for group representatives and three minutes for speakers representing themselves or single firms. Interested parties are also encouraged to coordinate and/or consolidate their presentations to prevent duplication.

An original and 10 copies of all speakers' proposed remarks or draft testimony, including a summary of no more than two pages, should be submitted by Monday, February 5, 1990 to: Office of the Secretary, Federal Communications Commission, Room 222, 1919 M Street, NW., Washington, DC 20554. Ref: MM Docket No. 89–600. One additional copy should also be submitted to Jim Hudgens, Office of Plans and Policy, FCC, Room 822. Information submitted at all of the field hearings will be included as a matter of public record in the Commission's pending *Cable Inquiry* (MM Docket No. 89–600). In addition, all interested parties may submit written comments in the Commission's pending *Cable Inquiry* to the Office of the Secretary by March 1, 1990 and reply comments by April 2, 1990, pursuant to the procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules.

The precise format and speaker schedule for the Los Angeles hearing will be specified in a further Public Notice. Deadlines for submitting speaker requests and written comments for the Orlando and St. Louis hearings also will be announced in a future Public Notice. All of the cable hearings will be open to the public. For further information about the hearings, please contact Jim Hudgens at (202) 653–5940. The contact for media coverage is Lorrie Secrest at (202) 632–5050.

[FR Doc. 90–639 Filed 1–12–90; 8:45 am]

BILLING CODE 6712–01–M

[1] Published elsewhere in this issue.

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47 CFR Part 76

[MM Docket No. 89–600; FCC 89–345]

Broadcast Services; Cable Television Inquiry

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: The Commission initiates an inquiry into the cable television industry's operation. This action results, in part, from a directive included in the Cable Communications Policy Act of 1984 to conduct a study of the cable industry's operations under the Act and, based on the study results, to prepare and submit a report to Congress by October 28, 1990. In this inquiry, the Commission intendes, *inter alia*, to develop a factual record to help determine the validity of current concerns over cable industry practices and to obtain additional information that will be useful in determining the course of further regulatory or legislative action.

DATES: Comments are due by March 1, 1990, and reply comments are due by April 2, 1990.

ADDRESSES: Federal Communication Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David E. Horowitz at (202) 632–7792, or Scott Roberts at (202) 632–6302, Mass Media Bureau, Policy and Rules Division.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Inquiry* (*Notice*) in MM Docket No. 89–600, adopted December 12, 1989, and released December 29, 1989. The full text of this *Notice* is available for inspection and copying during normal business

hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice of Inquiry

1. The Cable Communications Policy Act of 1984 (Cable Act) directed the Commission to conduct a study of the cable industry's operations under the Cable Act and, based on that study, to prepare and submit to Congress a report analyzing the effect on the video services marketplace of substituting market forces for cable rate regulation and, if appropriate, to recommend legislation. This "Six Year Report" must be submitted to Congress no later than October 28, 1990. The Commission opens this comprehensive inquiry as its first step in preparing that report, which it intends to present to Congress no later than July 31, 1990.

2. In the years since the adoption of the Cable Act, dramatic changes in the cable industry have reshaped the video services market on both a local and a national level. Over the last five years, cable has grown tremendously in terms of the number of subscribers, penetration, channel capacity, program offerings, audience share and advertising revenue. Thus, there can be no doubt that the cable industry has prospered under the Cable Act. At the same time, concern has grown about whether cable has begun to abuse its market power in the video marketplace. There are increasing consumer complaints about high and rising basic cable rates, poor service quality, and the dropping or repositioning of signals. Video service competitors to cable (as well as small system cable operators) have also rasied complaints that large and multi-system cable operators abuse their market power by manipulating the carriage of broadcast or other signals and by competing unfairly in the advertising or program acquisition markets.

3. In this proceeding, the Commission seeks hard evidence and empirical analyses of the cable industry's conduct and relationships in order to develop a factual record that will enable it to determine the validity of the concerns listed above. To the extent that this inquiry may demonstrate that participants in the cable industry have indeed engaged in anticompetitive practices, the Commission invites analyses of the causes and effects of those practices. It seeks answers to such questions as: What is the relevant product market in which those practices occur? How vigorous is the competition within the cable segment of that market? Who are the actual or potential non-cable competitors in that market? What portion of that market is controlled by the cable industry? Does the cable industry's conduct reflect its abuse or accumulation of an undue degree of power in that market?

4. To the extent that concerns about the exercise of undue market power by cable operators appear valid, the Commission invites commenters to suggest responses that will address them. The Commission's goal is to identify those cable practices that constitute abuses of market power and to initiate appropriate curative action to ensure that the public is served in the best, most efficient manner possible. The Commission might undertake or recommend to Congress two distinct types of regulatory response. The first would be to attempt to increase competition to cable service providers (which should lead to an increase in viewer choices) by removing restrictions on competitors to cable, or by taking other similar action to increase competition. The second would be to regulate cable industry practices directly.

5. While the Commission continues to believe that, in the long term, competitive market forces will best promote the interests of viewers or consumers, it requests comment on the extent to which competitive market forces may be prevented from working in local, regional and national cable service and programming markets and, accordingly, the extent to which some degree of at least interim regulatory intervention may be necessary to assure competition in these markets. Specifically, the Commission seeks recommendations for the modification or repeal of existing rules, the imposition of new rules and any legislative recommendations which commenters believe will best promote a competitive cable marketplace.

6. The Notice is divided into three major sections. The first focuses on local market issues concerning cable market power and competition, particularly with respect to cable rates and service and alternative, non-cable sources of video programming and their access to viewers. The second major section focuses on national market issues, such as whether horizontal concentration and vertical integration in the cable industry have allowed operators of large cable systems to manipulate the programming supply and competitive opportunities of smaller operators and non-cable delivery media. The Commission recognizes that local and national issues involve a host of interrlated factors. Accordingly, the last major section of the Notice highlights and seeks comment on the interrelationships among these issues and possible remedies to the problems such relationships can raise.

7. By dividing the Notice into local and national market issues, the Commission does not intend to ignore the complexities involved in this inquiry. For example, the Commission recognizes that cable systems may also be viewed as operating in regional markets and that marketplace dynamics on a regional level may differ from those on a national or local level. Accordingly, to the extent that the cable industry's regional behavior raises unique concerns, the Commission invites commenters to address such concerns.

8. In addition to addressing the issues raised in the Notice, commenters are free to respond with information concerning other issues which they believe are relevant to this proceeding. To make such comments useful, however, the Commission requests that commenters include analysis directly relating any proposed regulatory action to a documented problem and explaining how the regulatory action would alleviate the problem.

9. There are several Commission proceedings and petitions that contain information relevant to this inquiry. The Commission is therefore terminating the following proceedings and making the records developed therein a part of the record in this inquiry: (a) RM–5475, the proceeding triggered by the filing of a Petition for Rulemaking by SATCOM, Inc., and (b) MM Docket No. 88–138, the Commission's Cable Signal Carriage Inquiry. The Commission is also including as part of the record in this proceeding the following petitions filed by the Association of Independent Television Stations, Inc. (INTV): (a) The petition for inquiry into whether the Commission should exercise its authority under section 612(g) of the Cable Act to regulate some currently unregulated facets of cable television service (filed Dec. 21, 1988), and (b) the petition for rulemaking to prevent anti-competitive practices by cable television stations (filed October 23, 1989).

Comment Information

10. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before March 1, 1990, and reply comments on or before April 2, 1990. All relevant and timely comments will be

considered by the Commission before final action is taken in this proceeding.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-956 Filed 1-12-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB38

Endangered and Threatened Wildlife and Plants, Proposed Endangered Status for Four Snub-nosed Monkeys

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine endangered status for the Sichuan, Yunnan, Guizhou, and Tonkin snub-nosed monkeys. The last would be reclassified from threatened status. All occupy restricted ranges in China or Viet Nam, and are jeopardized by human habitat disruption and/or direct taking. This proposal, if made final, would implement the protection of the Act for these four monkeys. The Service seeks relevant data and comments from the public.

DATES: Comments must be received by April 16, 1990. Public hearing requests must be received by March 2, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Chief, Office of Scientific Authority; Mail Stop: Arlington Square, Room 725; U.S. Fish and Wildlife Service; Washington, DC 20240. Comments and materials received will be available for public inspection, by appointment, from 8:00 a.m. to 4:00 p.m., Monday through Friday, in Room 750, 4401 Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address (703-358-1708 or FTS 358-1708).

SUPPLEMENTARY INFORMATION:

Background

The snub-nosed monkeys or langurs of eastern Asia are placed in the genus *Rhinopithecus*, which sometimes has been treated only as a subgenus of *Pygathrix*, the Douc langurs, but which now is recognized as a full genus (Eudey 1987). There currently are thought to be four species: the Sichuan or golden snub-nosed monkey (*R. roxellana*), found in the mountainous region on the southeastern slopes of the Tibetan Plateau in the Chinese provinces of Hubei, Shaanxi, Gansu, Sichuan, and Yunnan; the Yunnan or black snub-nosed monkey (*R. bieti*), which occurs in the Yun-ling Range of Tibet and Yunnan; the Guizhou or gray snub-nosed monkey (*R. brelichi*), found in the Fan-jin Range south of the Middle Yangtze in Guizhou Province of China; and the Tonkin snub-nosed monkey (*R. avunculus*), of northern Viet Nam (Brandon-Jones 1984; Eudey 1987). As indicated by the names, coloration varies between the species. In size, these monkeys range from about 20 to 33 inches (51 to 83 centimeters) in head and body length, and 20 to 38 inches (51 to 97 centimeters) in tail length. They inhabit high mountain forests, up to about 13,000 feet (4,000 meters), but may descend to lower elevations in winter. Part of their range is covered by snow for more than half the year.

It is known that these species are among the most critically endangered primates in the world. The Primate Specialist Group of the International Union for Conservation of Nature (IUCN) Species Survival Commission considers *R. bieti*, *R. brelichi*, and *R. avunculus* to have the "highest possible priority rating" for conservation action. Only one other Asian primate has been given this rating. *R. roxellana* has a "very high conservation rating" (Eudey 1987). The IUCN now formally classifies *R. bieti*, *R. brelichi*, and *R. avunculus* as endangered, and *R. roxellana* as vulnerable. All snub-nosed monkeys are on Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. In the **Federal Register** of October 19, 1976 (41 FR 45993), the U.S. Fish and Wildlife Service classified *R. avunculus* as threatened, pursuant to the Endangered Species Act of 1973. In order to more accurately express the bioconservation situation, as well as to help establish closer alignment between the Convention appendices and the U.S. Lists of Endangered and Threatened Wildlife and Plants, the Service now proposes to reclassify *R. avunculus* as endangered and to determine endangered status for *R. roxellana*, *R. bieti*, and *R. brelichi*.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth the procedures for adding species to the Federal Lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Sichuan, Yunnan, Guizhou, and Tonkin snub-nosed monkeys are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

All four species have declined substantially in range and numbers in recent years. The main problem is habitat loss and environmental disturbance through human activities. An especially severe factor is the destruction of forests through slash and burn agriculture. *R. avunculus* also is thought to have suffered in association with military activity during the Viet Nam War. A number of protected reserves exist in China and Viet Nam, but even these areas appear to have large populations of people. Estimates of the numbers of surviving individuals for each species have fluctuated, but are now thought to be about 10,000 to 15,000 for *R. roxellana*, 600 to 800 for *R. bieti*, 200 to 670 for *R. brelichi*, and 880 for *R. avunculus* (Eudey 1987; MacKinnon and MacKinnon 1987; Wang and Quan 1986).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

All species have been hunted by people to obtain food, pelts, and parts for medicinal purposes. Tan (1985) reported a number of large-scale roundups of *R. roxellana*, during each of which up to about 200 individuals were captured for export. In another case, thousands of commune members encircled a mountain forest, gradually driving several hundred monkeys into a large stockade, where a "breeding farm" would be established. However, the monkeys therein rapidly died off and the project failed.

C. Disease or Predation

Not now known to be immediate problems, but of potential concern in any case of a species reduced to very limited numbers or habitat.

D. The Inadequacy of Existing Regulatory Mechanisms

Tan (1985) reported that commercial hunting was continuing in China, and suggested that protective measures are inadequate. Eudey (1987) indicated that nature reserves are not being properly protected in China, and MacKinnon (1987) stated that only a small part of

the habitat of *R. avunculus* is protected in Viet Nam.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

None now known.

The decision to propose endangered status for the Sichuan, Yunnan, Guizhou, and Tonkin snub-nosed monkeys was based on an assessment of the best available scientific information, and of past, present, and probable future threats to the species. All four of these monkeys have very low numbers and are vulnerable to human exploitation and disturbance. If conservation measures are not implemented, further declines are likely to occur. Critical habitat is not being proposed, as its designation is not applicable to foreign species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened pursuant to the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages conservation measures by Federal, international, and private agencies, groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions that are to be conducted within the United States or on the high seas, with respect to any species that is proposed or listed as endangered or threatened and with respect to its proposed or designated critical habitat (if any). Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a proposed federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. No such actions are currently known with respect to the species covered by this proposal.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered species in foreign countries. Section 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species, and to provide assistance for such programs, in the form of personnel and the training of personnel.

Section 9 of the Act, and implementing regulations found at 50 CFR 17.21, set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (within the United States or upon the high seas), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered wildlife. It also is illegal to possess, sell, deliver, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out outherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance propagation or survival, or for incidental take in connection with other such lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available. International trade in these four species is expected to be minimal.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, comments and suggestions concerning any aspect of this proposed rule are hereby solicited from the public, concerned governmental agencies, the scientific community, industry, private interests, and other parties. Comments particularly are sought concerning the following:

(1) Biological, commercial, or other relevant data concerning any threat (or lack thereof) to the subject species;

(2) The location of any additional populations of the subject species;

(3) Additional information concerning the distribution of these species; and

(4) Current or planned activities in the involved areas, and their possible effect on the subject species.

Final promulgation of the regulation on the subject species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of final regulations that differ from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal, should be in writing, and should be directed to the party named in the above **"ADDRESSES"** section.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** of October 25, 1983 (48 FR 49244).

Literature Cited

Brandon-Jones, D. 1984. Colobus and leaf monkeys. *In* Macdonald, D., ed. The encyclopedia of mammals, Facts on File Publications, New York, pp. 398–409.

Eudey, A.A. 1987. Action plan for Asian primate conservation: 1987–91. International Union for Conservation of Nature/Species Survival Commission Primate Specialist Group, 65 pp.

MacKinnon, J., and K. Mackinnon. 1987. Conservation status of the primates of the Indo-Chinese subregion. Primate Conservation 8:187–195.

Tan Bangjie. 1985. The status of primates in China. Primate Conservation 5:63–81.

Wang Sung, and Quan Guoquiang. 1986. Primate status and conservation in China. *In* Benirschke, K., ed. Primates, the road to self-sustaining populations Springer-Verlag, New York, pp. 213–220.

Author

The primary author of this proposed rule is Dr. Ronald M. Nowak, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (703–358–1708 or FTS 358–1708).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.11(h) by revising the entry under MAMMALS for the "Langur, Tonkin snub-nosed (*Pygathrix (Rhinopithecus) avunculus*)" and by adding the following, in alphabetical order under MAMMALS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species			Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name							
MAMMALS								
. . . . .								
Monkey (=langur), snub-nosed.	Guizhou	*Rhinopithecus brelichi.*	(=*Pygathrix*) China	Entire	E		NA	NA
. . . . .								
Monkey (=langur), snub-nosed.	Sichuan	*Rhinopithecus roxellana.*	(=*Pygathrix*) China	Entire	E		NA	NA
. . . . .								
Monkey (=langur), snub-nosed.	Tonkin	*Rhinopithecus avunculus.*	(=*Pygathrix*) Viet Nam	Entire	E	16, —	NA	NA
. . . . .								
Monkey (=langur), snub-nosed.	Yunnan	*Rhinopithecus bieti.*	(=*Pygathrix*) China	Entire	E		NA	NA
. . . . .								

Dated: December 11, 1989.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–942 Filed 1–12–90; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018–AB36

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Six Foreign Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine endangered status for six foreign birds: the Northern bald ibis, white-winged guan, cheer pheasant, red-tailed parrot, Norfolk Island parakeet, and Madagascar red owl. All occupy restricted ranges and are adversely affected by human habitat disruption and/or direct killing. This proposal, if made final, would implement the protection of the Act for these six birds. The Service seeks relevant data and comments from the public.

DATES: Comments must be received by April 16, 1990. Public hearing requests must be received by March 2, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Chief, Office of Scientific Authority, Mail Shop: Arlington Square, Room 725, U.S. Fish and Wildlife Service, Washington, DC 20240. Comments and materials received will be available for public inspection, by appointment, from 8:00 a.m. to 4:00 p.m., Monday through Friday, in Room 750, 4401 Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address (703–358–1708 or FTS 358–1708).

SUPPLEMENTARY INFORMATION:

Background

In a petition of November 24, 1980, the International Council for Bird Preservation requested the addition of 79 kinds of birds to the U.S. List of Endangered and Threatened Wildlife. Two of these birds actually were already on the List, and so the petition technically applied to 77 species. In the **Federal Register** of May 12, 1981 (46 FR 26464–26469), the Service announced its finding that the petition had presented substantial information in support of listing, and also announced a status review of the 77 species. Of these species, 19 are native to the United States or its territories. Of these 19, 4 subsequently were added to the List, and the rest were placed in various categories in the Service's Animal Notice of Review in the **Federal Register** of January 6, 1989 (54 FR 554–579).

The Service has not yet listed or made a final decision with regard to any of the 58 foreign kinds of birds covered by the petition. Of the 58, however, 6 are already on Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Partly in conjunction with an effort to establish closer alignment between the Convention appendices and the U.S. Lists of Endangered and Threatened Wildlife and Plants, the Service now proposes to determine endangered status for these 6 birds. Being the subjects of a petition, these and the other 52 birds in question require an annual finding, pursuant to Section 4(b)(3)(B) of the Endangered Species Act, as to whether listing is warranted, not warranted, or warranted but precluded by other listing activity. The Service has made a number of such findings of warranted but precluded for all the foreign birds in question, the most recent having been published in **Federal Register** of December 29, 1988 (53 FR 52746–52749). This proposal now incorporates the Service's finding that listing is warranted with respect to the 6 birds named and described below.

The northern bald ibis, also known as the hermit ibis or waldrapp (*Geronticus eremita*), measures about 30 inches (75 centimeters) from tip to beak to tail. The head is completely naked, the legs and curved beak are red, and the plumage is generally dark. The species originally occurred across much of southern Europe, southwestern Asia, and northern Africa.

The white-winged guan (*Penelope albipennis*) is a member of the curassow family (Crucidae). It is about 28 inches (70 centimeters) long and is generally brown in color, but is distinguished by having the eight outer primary feathers white. It is endemic to a small part of northwestern Peru.

The cheer pheasant (*Catreus wallichii*) has about the same size and proportions as the common ring-necked pheasant, but lacks the pronounced markings of the latter. It is generally

light brown in color and has a large crest of feathers on the back of the head. It originally was found in the Himalayan foothills of Pakistan, India, and Nepal.

The red-tailed parrot (*Amazona brasiliensis*) is about 15 inches (37 centimeters) long. The plumage is mainly green, the top of the head is red, the throat and upper breast are blue, and the lateral tail feathers are yellow. The species occurs only in the forests of southeastern Brazil.

The Norfolk Island parakeet (*Cyanoramphus novaezelandiae cookii*) is about 11 inches (28 centimeters) long. The plumage is mainly green, the top and sides of the head are red, and the outer webs of the tail feathers are violet-blue. It is endemic to Norfolk Island, an Australian possession between New Zealand and New Caledonia in the southwestern Pacific.

The Madagascar red owl (*Tyto soumagnei*) is related to the barn owl of North America, but is much smaller, measuring only 9 inches (23 centimeters) long. It is mostly reddish in color. It is found in the eastern forests of Madagascar.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for adding species to the Federal Lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the six birds named above are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The northern bald ibis now breeds in only tiny fragments of its once vast range that stretched from France and Spain to Iraq, Ethiopia, and Mauritania. Its decline has been caused by a variety of problems, including natural dessication of its range in Egypt, climatic cooling in Europe, human disturbance of its nesting sites on cliffs, agricultural development of other habitat, drainage of marshes where it searched for food, and the widespread application of toxic pesticides throughout its range. Breeding ceased in Europe in the 17th century. There still were thousands of birds in Turkey and Syria in the early 1900's, but now only a single breeding colony remains in Asia—at Birecek, Turkey—and it consists of only about 30 birds. There were about a thousand pairs in Morocco in the 1930's, but only 93 in 1982, which occupied about 12 declining colonies. The only other possible remaining breeding site is in Algeria (Collar and Andrew 1988; Collar and Stuart 1985; King 1981).

In contrast to the great original distribution of the ibis, the white-winged guan has always been known only from extreme northwestern Peru, where it occupied a variety of forest habitat. Unfortunately, this habitat is rapidly being destroyed through burning of the forests to produce charcoal. The guan was said to be locally common in the mid-19th century, but its numbers fell to several hundred by the 1970's and to no more than 100 today (Collar and Andrew 1988; King 1981).

The cheer pheasant still occurs across its original range in the western Himalayas, but only in small, fragmented populations. Its decline has resulted in part from agricultural activity and other human modifications of the forests and meadows on which it depends (Collar and Andrew 1988; King 1981).

The red-tailed parrot is restricted to the primary coastal forests of southeastern Brazil, which have been largely destroyed in recent decades by human development. Its total population is now no more than 4,000 individuals (Collar and Andrew 1988; King 1981).

The Norfolk Island parakeet once was very common on the 14 square mile (85 square kilometer) island, to which it is confined. Now, with only about 20 surviving individuals, it is among the world's most critically endangered birds. Its decline was brought about by a number of factors, including human destruction of its forest habitat, competition with introduced bird species, and persecution as an agricultural pest (King 1981; Moors 1985).

The Madagascar red owl inhabits the humid rainforest of eastern Madagascar. This area is being cleared for agriculture and is subject to other human disturbance. Only a few specimens have been collected, the most recent in 1934. An individual also was reported in 1973 (Collar and Stuart 1985).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Most of the birds covered by this proposal have been subject to excessive taking by people. Hunting for use as food has been a major factor in the decline of the northern bald ibis in Africa and Asia. The white-winged guan also is threatened for this reason. The cheer pheasant has been relentlessly persecuted by hunters, and its sedentary habits make it especially vulnerable to such pressure. Specimen and egg collectors are considered a serious problem to remaining colonies of the northern bald ibis. The red-tailed parrot is threatened by the pet trade (Collar and Andrew 1988; Collar and Stuart 1985; King 1981).

C. Disease or Predation

The northern bald ibis suffers from nest predation by ravens. Disease and breeding failure may have contributed to the decline of the cheer pheasant. The status of the Norfolk Island parakeet has deteriorated in part because of avian disease and predation by introduced cats and rats (Collar and Andrew 1988; Collar and Stuart 1985; Moors 1985).

D. The Inadequacy of Existing Regulatory Mechanism

The northern bald ibis is legally protected in those places where it is still known to breed, but this factor has not prevented severe declines and is not controlling disturbance, poaching, and other immediate problems. The remote habitat of the white-winged guan would make enforcement of hunting laws difficult. The cheer pheasant is legally protected, but poaching is a major problem. The red-tailed parrot also is legally protected, but can still be acquired as a pet for a suitable sum. Licenses to shoot the Norfolk Island parakeet are still available. The Madagascar red owl receives no domestic legal protection (Collar and Andrew 1988; Collar and Stuart 1985; King 1981; Moors 1985). Although these six species are listed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the provisions of the Convention do not prevent loss of habitat, which is the main problem.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The northern bald ibis is extremely susceptible to pesticides. This factor is known to be responsible for a drastic reduction in the Asian population, and is considered the single greatest threat to the species throughout its remaining range (Collar and Stuart 1985). The Norfolk Island parakeet has declined in part through displacement by an introduced relative, the crimson rosella (*Platycercus elegans*), with which it competes for nest sites (Moors 1985).

The decision to propose endangered status for the northern bald ibis, white-winged guan, cheer pheasant, red-tailed parrot, Norfolk Island parakeet, and Madagascar red owl was based on an assessment of the best available

scientific information, and of past, present, and probable future threats to the species. All six of these birds have experienced significant declines in population and numbers and/ or suitable habitat in recent years, and are vulnerable to human exploitation and disturbance. If conservation measures are not implemented, further declines are likely to occur, increasing the Dec. 1/9/90 danger of extinction for these avian species. Critical habitat is not being proposed, as its designation is not applicable to foreign species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened pursuant to the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages conservation measures by Federal, international, and private agencies, groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions that are to be conducted within the United States or on the high seas, with respect to any species that is proposed or listed as endangered or threatened and with respect to its proposed or designated critical habitat (if any). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a proposed Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. No such actions are currently known with respect to the species covered by this proposal.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species, and to provide assistance for such programs, in the form of personnel and the training of personnel.

Section 9 of the Act, and implementing regulations found at 50 CFR 17.21, set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered wildlife. It also is illegal to possess, sell, deliver, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. Such permits are available for scientific purposes, to enhance propagation or survival, or for incidental take in connection with otherwise lawful activities.

International trade in these six species is expected to be minimal. The Service will review these species to determine whether any of them should be placed on the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, which is implemented through Section 8A(e) of the Act, and whether they should be considered for other appropriate international agreements.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, comments and suggestions concerning any aspect of this proposed rule are hereby solicited from the public, concerned governmental agencies, the scientific community, industry, private interests, and other parties. Comments particularly are sought concerning the following:

(1) Biological, commercial, or other relevant data concerning any threat (or lack thereof) to the subject species;

(2) The location of any additional populations of the subject species;

(3) Additional information concerning the distribution of these species; and

(4) Current or planned activities in the involved areas, and their possible effect on the subject species.

Final promulgation of the regulation on the subject species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of final regulations that differ from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of publication of the proposal, must be in writing, and should be directed to the party named in the above "**ADDRESSES**" section.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** of October 25, 1983 (48 FR 49244).

Literature Cited

Collar, N.J., and P. Andrew. 1988. Birds to watch. The ICBP world checklist of threatened birds. International Council for Bird Preservation Tech. Publ., No. 8, xvi + 303 pp.

Collar, N.J., and S.N. Stuart. 1985. Threatened birds of Africa and related islands. The ICBP/IUCN red data book, part 1. International Council for Bird Preservation, Cambridge, England, xxxiv + 761 pp.

King, W.B. 1981. Endangered birds of the world. The ICBP bird red data book. Smithsonian Institution Press, Washington, DC.

Moors, P.J. 1985. Conservation of island birds. International Council for Bird Preservation Tech. Publ., No. 3, × + 271 pp.

Author

The primary author of this proposed rule is Dr. Ronald M. Nowak, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (703–358–1708 or FTS 358–1708).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under BIRDS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

(h) * * *

* * * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
BIRDS							
*	*	*	*	*	*	*	
Guan, white-winged	*Penelope Albipennis*	Peru	Entire	E		NA	NA
*	*	*	*	*	*	*	
Ibis, northern bald	*Geronticus eremita*	Southern Europe, southwestern Asia, northern Africa.	Entire	E		NA	NA
*	*	*	*	*	*	*	
Owl, Madagascar red	*Tyto soumagnei*	Madagascar	Entire	E		NA	NA
*	*	*	*	*	*	*	
Parakeet, Norfolk, Island	*Cyanoramphus novaezelandiae cookii.*	Australia (Norfolk Island)	Entire	E		NA	NA
*	*	*	*	*	*	*	
Parrot, red-tailed	*Amazona brasiliensis*	Brazil	Entire	E		NA	NA
*	*	*	*	*	*	*	
Pheasant, cheer	*Catreus wallichii*	India, Nepal, Pakistan	Entire	E		NA	NA
*	*	*	*	*	*	*	

Dated: December 8, 1989.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90-941 Filed 1-12-90; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 91295-9295]

Pacific Halibut Fisheries

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

ACTION: Notice of 1990 catch sharing options for Pacific halibut in Area 2A and request for comments.

SUMMARY: NOAA announces and requests comments on options and alternatives developed by the Pacific Fishery Management Council (Council) to allocate the catch of Pacific halibut in 1990 between treaty Indian and non-Indian commercial and recreational fishermen in International Pacific Halibut Commission (IPHC) statistical Area 2A.

The proposed options and alternatives were developed to allocate the total allowable catch of Pacific halibut in Area 2A that will be established by the IPHC in January 1990 between domestic users in accordance with the Northern Pacific Halibut Act of 1982. The purpose of this notice is to solicit public comments on the options and alternatives before final action is taken by the Council in recommending approval by the Secretary of Commerce (Secretary) and implementation by the IPHC.

DATE: Comments on the proposed options and alternatives must be received by January 19, 1990.

ADDRESS: Send comments to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206-526-6140.

SUPPLEMENTARY INFORMATION: The Northern Pacific Halibut Act (Halibut Act), Public Law 97-176, 16 U.S.C. 773c(c), authorizes the Regional Fishery Management Council having authority for the geographic area concerned to develop regulations governing the allocation of Pacific halibut catch in U.S. Convention waters. These regulations are in addition to, but not in conflict with, the regulations of the International Pacific Halibut Commission (IPHC). The geographic area involved is all U.S. marine waters lying south of the U.S./Canadian border, including Puget Sound, known as IPHC statistical Area 2A.

The Pacific halibut harvest in Area 2A historically has been undertaken almost entirely by one user group, the non-Indian commercial longline fishery. In recent years, the treaty Indian tribes have begun to develop a commercial halibut fishery with tribal fishing effort and harvests increasing from four treaty Indian tribes with 17,000 pounds harvested in 1986 to twelve treaty Indian tribes with over 152,000 pounds of halibut harvested in 1989. In addition, the non-Indian recreational fishery has undergone a dramatic increase from a catch of about 50,000 pounds in 1983 to a peak catch of about 461,000 pounds in 1987. These increases culminated in a combined harvest of over a million pounds of halibut in Area 2A in 1987 by treaty Indian and non-Indian commercial and sport users; this harvest exceeded the maximum sustained yield of 800,000 pounds set by the IPHC. The increased effort and catch by the three user groups need to be controlled and reduced to meet conservation goals established by the IPHC. Therefore, the Council began allocating the total allowable catch (TAC) in Area 2A in 1988 in compliance with a directive by the Under Secretary of Commerce that the Pacific and North Pacific Fishery Management Councils should allocate halibut catches among user groups if allocation is necessary.

The Council developed Catch Sharing Plans in 1988 and 1989 that were approved by the Secretary and implemented by the IPHC. The 1989 Plan was based on a TAC of 650,000 pounds and included a number of specific provisions that were described in the **Federal Register** notice (54 FR 8542, March 1, 1989) that announced approval of the 1989 Catch Sharing Plan by the Secretary. Following approval by the Secretary, the 1989 Plan was forwarded to the IPHC, which adopted implementing regulations (54 FR 19895, May 9, 1989). In general, the 1989 Plan established subquotas (sub-TACs) of 152,000 pounds for the treaty Indian commercial and ceremonial and subsistence fisheries, 274,000 pounds for the non-Indian commercial fishery, and 224,000 pounds for the non-Indian recreational fisheries. The non-Indian fisheries were allocated 498,000 pounds, which were divided 55 percent for the commercial fishery and 45 percent for

the recreational fisheries in accordance with a two-year sharing agreement between these groups that was approved by the Secretary in 1988 (53 FR 7528, March 9, 1988). In addition, the Council recommended recreational seasons and size and bag limits that were designed to achieve overall recreational allocation and to distribute it among five geographic areas within Area 2A. These recommendations were accepted and implemented by the IPHC in its 1989 regulations. The 1989 Plan and IPHC implementing regulations resulted in a harvest of about 152,000 pounds by treaty Indians, about 320,000 pounds by non-Indian commercial users, and about 319,000 pounds by recreational users.

A Catch Sharing Plan for the three user groups in Area 2A is necessary in 1990 because the combined fishing power of the user groups exceeded the 1989 TAC of 650,000 pounds by over 141,000 pounds, and because it is anticipated that the 1990 TAC will be less than in 1989. In addition, the 1989 sharing provisions between treaty Indian and non-Indian commercial and recreational fisheries have expired.

The Council, at its November 15–17, 1989 public meeting in Portland, Oregon, adopted for public review and comment a range of options and alternatives for development of a 1990 Catch Sharing Plan to allocate the catch of Pacific halibut between treaty Indian, non-Indian commercial and non-Indian recreational fishermen in Area 2A. The Council adopted two options described below for the sharing of the 1990 TAC in Area 2A as sub-TACs between treaty Indian and non-Indian users, and four alternatives described below for the sharing of the non-Indian sub-TAC between commercial and recreational fishermen. The options for allocating the TAC between treaty Indian and non-Indian users were developed by a Halibut Managers Group (HMG) consisting of state, federal, and tribal fishery managers. The alternatives for allocating the non-Indian sub-TAC between commercial and recreational users were developed by the Council's Halibut Select Group (HSG) consisting of non-Indian commercial and recreational representatives and state and federal fishery managers. In addition, Council and state sponsored public workshops were held in Newport, Oregon on October 30, 1989 and in Seattle, Washington on November 1, 1989 to obtain input from user groups and the general public on the non-Indian allocation of TAC between commercial and recreational users.

Treaty Indian/Non-Indian Catch Sharing Options

The Council adopted two options developed by the HMG. In contrast to previous years when the HMG presented the Council with a single Catch Sharing Proposal, the HMG presented two options to the Council because it was unable to reach consensus on a 1990 proposal. The Council adopted for public comment the following tribal fishery managers' option (Option 1) and a state fishery managers' option (Option 2).

Option 1. Allocate 213,000 Pounds of Area 2A TAC to Treaty Indians

This option was developed by tribal representatives to address their view that substantial growth in their longline fishery resulted in a short tribal longline fishery. The tribes desire an increase over their 1989 allocation of 152,000 pounds to 213,000 pounds in 1990 to meet their needs and continued growth in future years. This option would provide a 213,000 pound allocation to tribal fisheries (including 10,000 to 15,000 pounds for tribal ceremonial and subsistence fisheries) if the overall Area 2A TAC is 600,000 pounds or less.

Option 2. Allocate 25 Percent of Area 2A TAC to Treaty Indians.

This option was developed by the state representatives to address their view that non-Indian commercial and recreational users could harvest substantially more fish than is available, but have had their catches reduced to allow continued growth in tribal fisheries. Because of the declining TAC, the state representatives desire to maintain a status quo sharing arrangement that essentially maintains the proportional sharing set forth in the 1989 Catch Sharing Plan with a slight increase in the tribal share from 23.4 percent in 1989 to 25 percent in 1990. This option would allocate 75 percent of the TAC to non-Indian fisheries and 25 percent to tribal fisheries.

Non-Indian Sub-TAC Catch Sharing Proposals.

The Council adopted four alternatives developed by the HSG. Like the HMG, the HSG was unable to reach consensus on a single Catch Sharing Proposal to present to the Council and developed the following range of four alternatives. Each alternative combines user concerns on allocation between commercial and recreational (sport) users, and division of the sport allocation between Washington and Oregon users.

Alternative A: Retain Status Quo Proportionate Sharing Developed in the 1989 Catch Sharing Plan.

This alternative would maintain the two-year (1988/89) agreement between the commercial and sport users and the states as follows.

55 percent Commercial share of non-Indian sub-TAC.
45 percent Sport share of non-Indian sub-TAC.
75 percent Washington share of Sport allocation.
25 percent Oregon share of Sport allocation.

Alternative B: Increase the Allocation to Sport Fisheries With Greater Share to Oregon and Locate the Commercial Fishery Principally Off Oregon.

This alternative would shift the location of the commercial fisheries to south of Willapa Bay, except that 5,000 to 10,000 pounds of commercial sub-TAC would be reserved for incidental use by Washington commercial fishermen north of Willapa.

38 percent Commercial share of non-Indian sub-TAC.
62 percent Sport share of non-Indian sub-TAC.
61 percent Washington share of Sport allocation.
39 percent Oregon share of Sport allocation.

Alternative C: Increase the Allocation to Sport Fisheries With Greater Share to Oregon

This alternative is the same as Alternative B, except that it places no geographic restrictions on the commercial fishery. This alternative provides the same increases as Alternative B to the allocation to sport fisheries with a greater share to Oregon as follows.

38 percent Commercial share of non-Indian sub-TAC.
62 percent Sport share of non-Indian sub-TAC.
61 percent Washington share of Sport allocation.
39 percent Oregon share of Sport allocation.

Alternative D: Divide the Non-Indian TAC Equally Between Commercial and Recreational and Maintain the 61:39 Sport Sharing Between Washington and Oregon as Described in Alternatives B and C as Follows

50 percent Commercial share of non-Indian sub-TAC.
50 percent Sport share of non-Indian sub-TAC.
61 percent Washington share of Sport allocation.
39 percent Oregon share of Sport allocation.

Examples of the proposed sharing between users under the options and alternatives at a 500,000 pound Area 2A

TAC and a 600,000 pound TAC are shown in Table 1. The options and alternatives are based on an anticipated Area 2A TAC of 500,000 to 600,000 pounds because a final TAC is not yet available. Establishment of the final TAC is the responsibility of the IPHC and the final TAC will not be determined until the annual meeting of the IPHC in January.

Table 1. Examples of Allocation of TAC Under the Proposed Catch Sharing Options and Alternatives for Pacific Halibut in Area 2A

Treaty Indian/Non-Indian Catch Sharing Options

Option 1. Allocate 213,000 pounds (lbs.) of Area 2A TAC to treaty Indians.

At 500,000 lb. TAC
Indian Share 213,000 lbs.
Non-Indian Share 287,000 lbs.
At 600,000 lb. TAC
Indian Share 213,000 lbs.
Non-Indian Share 387,000 lbs.

Option 2. Allocate 25 percent of Area 2A TAC to treaty Indians.

At 500,000 lb. TAC
Indian Share 125,000 lbs.
Non-Indian Share 375,000 lbs.
At 600,000 lb. TAC
Indian Share 150,000 lbs.
Non-Indian Share 450,000 lbs.

Non-Indian Sub-TAC Catch Sharing Proposals

Alternative A: Retain Status Quo Proportionate Sharing Developed in the 1989 Catch Sharing Plan

At 500,000 lb. TAC (rounded to nearest 1000 lbs.)

	Option 1	Option 2
Commercial	158,000	206,000
WA Sport	97,000	127,000
OR Sport	32,000	42,000
	287,000	375,000

At 600,000 lb. TAC (rounded to nearest 1000 lbs.)

	Option 1	Option 2
Commercial	212,000	247,000
WA Sport	131,000	152,000
OR Sport	44,000	51,000
	387,000	450,000

Alternative B: Increase the Allocation to Sport Fisheries With Greater Share to Oregon and Locate the Commercial Fishery Principally Off Oregon

At 500,000 lb. TAC (rounded to nearest 1000 lbs.)

	Option 1	Option 2
Commercial	109,000	142,000
WA Sport	109,000	142,000
OR Sport	69,000	91,000
	287,000	375,000

At 600,000 lb. TAC (rounded to nearest 1000 lbs.)

	Option 1	Option 2
Commercial	147,000	171,000
WA Sport	146,000	170,000
OR Sport	94,000	109,000
	387,000	450,000

Alternative C: Increase the Allocation to Sport Fisheries With Greater Share to Oregon (Without Restricted Area for Commercial Fisheries)

At 500,000 lb. TAC (rounded to nearest 1000 lbs.)

	Option 1	Option 2
Commercial	109,000	142,000
WA Sport	109,000	142,000
OR Sport	69,000	91,000
	287,000	375,000

At 600,000 lb. TAC (rounded to nearest 1000 lbs.)

	Option 1	Option 2
Commercial	147,000	171,000
WA Sport	146,000	170,000
OR Sport	94,000	109,000
	387,000	450,000

Alternative D: Divide the Non-Indian TAC Equally Between Commercial and Recreational and Maintain the 61:39 Sport Sharing Between Washington and Oregon

At 500,000 lb. TAC (rounded to nearest 500 lbs.)

	Option 1	Option 2
Commercial	143,500	187,500
WA Sport	87,500	114,500
OR Sport	56,000	73,000
	287,000	375,000

At 600,000 lb. TAC (rounded to nearest 500 lbs.)

	Option 1	Option 2
Commercial	193,500	225,000
WA Sport	118,000	137,000
OR Sport	75,500	88,000
	387,000	450,000

A final 1990 Catch Sharing Plan will be discussed by the Council during a telephone conference call meeting of the Council on January 10, 1990. The Council announced locations where the public may participate in the telephone conference call. After receipt and consideration of public comments, the Council will recommend a final 1990 Plan to the Secretary to be forwarded to the IPHC for implementation. Specific regulations to implement the final plan will be developed by the IPHC at its January 29 to February 1, 1990 public meeting in Seattle, Washington consistent with its responsibilities under the international convention.

Classification

These options and alternatives for a 1990 Catch Sharing Plan are published with a request for public comments as a general statement of agency policy which does not require notice and comment rulemaking under the Administrative Procedure Act at 5 U.S.C. 553(b)(A). Consequently, the Regulatory Flexibility Act does not apply. A regulatory impact review prepared for this proposed 1990 Catch Sharing Plan to fulfill the requirements of E.O. 12291 concludes that actions taken under the proposed options and alternatives are not "major" and a Regulatory Impact Analysis is not required.

An Environmental Assessment (EA) was prepared for the 1988 Catch Sharing Plan in accordance with the National Environmental Policy Act (NEPA), the Assistant Administrator for Fisheries, NOAA, determined that there would be no significant adverse environmental impact resulting from a Catch Sharing Plan and that preparation of an environmental impact statement was not required by Section 102(2)(C) of NEPA or its implementing regulations. The alternatives and environmental impacts of a 1990 Catch Sharing Plan are no different than those evaluated in the 1988 EA; therefore, this action is categorically excluded from the NEPA requirements to prepare another EA in accordance with paragraph 5a(3) of the NOAA Directives Manual 02–10 because the alternatives and their impacts have not changed and the determination of no significant environmental impact would also apply to a 1990 Catch Sharing Plan.

This action does not contain policies with federalism implications sufficient to warrant preparation of a federalism

assessment under Executive Order 12612. This action has been determined to be consistent to the maximum extent practicable with applicable State coastal zone management programs as required.

Copies of the 1988 environmental assessment and the 1990 regulatory impact review are available at the address above.

List of Subjects in 50 CFR Part 301

Fisheries, Treaties, Reporting and recordkeeping requirements.

Authority: 5 U.S.T. 5; T.I.A.S. 2900; 16 U.S.C. 773–773K.

Dated: January 9, 1990.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries.

[FR Doc. 90-902 Filed 1-12-90; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 55, No. 10
Tuesday, January 16, 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 AGRICULTURE

Commodity Credit Corporation

Final Determination of 1990 Upland Cotton Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of determination of 1990 upland cotton program.

SUMMARY: The purpose of this notice is to affirm the determinations made by the Secretary of Agriculture which are required to be made in order to implement the 1990 upland cotton price support and production adjustment program. These determinations are made in accordance with the Agricultural Act of 1949, as amended (the "1949 Act"), and the Commodity Credit Corporation (CCC) Charter Act, as amended (the "Charter Act").

EFFECTIVE DATE: November 3, 1989.

ADDRESS: Bruce R. Weber, Director, Commodity Analysis Division, USDA-ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Leader, Fibers Group, Commodity Analysis Division, USDA-ASCS, Room 3741 South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447-7954. The Final Regulatory Impact Analysis describing the options considered in developing this notice of determination is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been designated as "major." It has been determined that these program provisions will result in an annual effect on the economy of $100 million or more.

The titles and numbers of the Federal assistance programs, as found in the catalogue of Federal Domestic Assistance, to which this notice applies are:

Titles	Numbers
Commodity Loans and Purchases	10.051
Cotton Production Stabilization	10.052

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

It has been determined by environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

On August 16, 1989 (54 FR 33744), a notice of proposed determination was published requesting public comment on the 1990 Upland Cotton Program. A total of ten respondents submitted comments. Respondents included six producer associations, two cotton producers, one textile industry association, and one cotton shipper association. Their comments are summarized as follows:

(a) *Plan A/Plan B Marketing Loan*—Eight respondents commented. All favored Plan B, of which four recommended specifically that a minimum loan repayment rate not be established. Plan B without a minimum repayment floor will be implemented because it has been determined to be the most effective and efficient manner in which to administer the marketing loan program.

(b) *First Handler Certificates*—Four respondents commented. Two respondents indicated that first handler certificates were either not required or should not be issued. Two respondents supported the issuance of such certificates, one of which specified that generic certificates be issued. If under either Plan A or Plan B, U.S. upland cotton is not fully competitive in world markets and the adjusted world price (AWP) is below the loan repayment rate, the Secretary is required to issue first handler marketing certificates to buyers of upland cotton in an amount equal to the difference between the loan repayment rate and the AWP. Under Plan B as announced for the 1990/91 crop, whenever the AWP falls below the loan rate, the loan repayment rate is equal to the AWP. Therefore, since Plan B without a minimum repayment floor will be implemented, no first handler certificates will be issued.

(c) *Loan Deficiency Payments*—Seven respondents commented. All supported the issuance of loan deficiency payments. Five respondents suggested allowing loan deficiency payments on a bale-by-bale basis. Four respondents recommended payments should be paid part in cash and part in generic certificates. In order to provide producers with greater flexibility in marketing their cotton, loan deficiency payments will be made available to producers who, although otherwise eligible, agree to forgo loan eligibility on their 1990 crop upland cotton. Although the Secretary may make up to one-half of the amount of a loan deficiency payment in the form of negotiable marketing certificates, it has been determined that loan deficiency payments for 1990 will be made in the form of cash because limited quantities of CCC-owned commodities are available for certificate exchange.

(d) *Acreage Reduction Level (ARP)*—Eight respondents commented. One respondent recommended that the ARP be established at 25 percent and one recommended 20 percent. Two favored a 15-percent ARP, two recommended a level of 10 to 15 percent and two recommended the ARP level not exceed 10 percent. Stocks at the end of the 1989/90 marketing year are projected at 3.1 million bales, 900,000 bales below the 4-million bale statutory target, and low relative to projected use levels in 1990/91. In order to assure adequate supplies of all cotton qualities to meet anticipated demand during the 1990/91 marketing year, it has been determined that an ARP of 12.5 percent will be implemented for the 1990 crop.

(e) *Paid Land Diversion (PLD)*—Six respondents commented. All recommended that no PLD program be implemented for the 1990/91 marketing year. A PLD will not be made available

for the 1990/91 marketing year because of current supply-demand estimates.

(f) *Seed Cotton Loan Program*—Six respondents commented. All supported a seed cotton loan program, two of which specifically recommended that the seed cotton loan rate be set at a level comparable to that for lint cotton. A seed cotton recourse loan program will be made available to producers in order to provide interim financing for cotton prior to ginning. Since seed cotton loans are required to be repaid, there will be no additional net CCC outlays except for administrative expenses.

(g) *Inventory Reduction Program*—Five comments supporting implementation of an inventory reduction program were received. However, payments under the inventory reduction program must be made in the form of upland cotton owned by CCC. Since insufficient quantities of CCC-owned cotton are available, the inventory reduction program will not be offered.

(h) *Other*—One respondent recommended that the current system of determining the loan schedules of premiums and discounts for grade, staple and other qualities be maintained, that the practice of establishing base loan rates by warehouse location be discontinued and that the terms of the loan be changed from FOB (free on board) compress to FOB loaded railcars or trucks. The recommendation to maintain the current system of determining the loan schedules for grade, staple and other qualities will be adopted. The recommendation to discontinue establishing base loan rates by warehouse location and to change the terms of the loan from FOB compress to FOB loaded railcars or trucks will not be adopted. Elimination of locaton differences would remove from the loan program any consideration for cost of transporting cotton from the area where grown to the area where utilized and could result in additional forfeitures of loan collateral to CCC. Changing the terms of the loan from FOB warehouse to FOB loaded railcars or trucks would change the way cotton has traditionally been marketed and would result in additional administrative expenses for CCC.

Several respondents submitted additional remarks relating to issues for which comments were not requested.

This notice affirms the following determinations previously made and announced by the Secretary on November 3, 1989, with respect to the 1990 Upland Cotton Program.

Determinations

1. *Plan A/Plan B Marketing Loan and Loan Repayment Level.* In accordance with section 103A(a)(5) of the 1949 Act, it has been determined that Plan B of the marketing loan program will be implemented for the 1990 crop of upland cotton. Under Plan B, 1990-crop upland cotton pledged as collateral for a price support loan may be redeemed at the lower of the adjusted world price (AWP) or the loan level.

2. *First Handler Certificates.* In accordance with section 103A(a)(5)(D) of the 1949 Act, it has been determined that, since Plan B will be in effect without a minimum repayment floor during the 1990 marketing year and the loan repayment rate shall equal the lower of the AWP or the loan rate, no first handler certificates will be issued.

3. *Loan Deficiency Payments.* In accordance with section 103A(b) (1)–(5) of the 1949 Act, it has been determined that loan deficiency payments will be to eligible producers who agree to forego loan eligibility if the loan repayment rate is less than the announced loan level. The loan deficiency payment rate will equal the difference between the loan level and the loan repayment rate. Loan deficiency payments will be made in the form of cash.

4. *Acreage Reduction Program (ARP).* In accordance with section 103A(f) of the 1949 Act, it has been determined that the acreage reduction requirement for the 1990 crop of upland cotton will be 12.5 percent. Accordingly, producers will be required to reduce their 1990 upland cotton plantings for harvest by at least 12.5 percent from the upland cotton acreage base established for a farm in order to be eligible for upland cotton price support loans, loan deficiency and deficiency payments.

5. *Paid Land Diversion (PLD) Program.* In accordance with section 103A(f)(4)(A) of the 1949 Act, it has been determined that a PLD program will not be made available for the 1990 crop of upland cotton.

6. *Seed Cotton Loan.* In accordance with section 5 of the CCC Charter Act, it has been determined that recourse loans for seed cotton will be made available to producers of upland cotton for the 1990 crop under the same provisions that were applicable to the 1989 crop of upland cotton.

7. *Inventory Reduction Program.* In accordance with section 103A(g) of the 1949 Act, it has been determined that the Inventory Reduction Program will not be implemented for the 1990 crop of upland cotton.

8. *Other.* In accordance with section 103A(a) (1)–(2) of the 1949 Act, it has been determined that the loan level will be 50.27 cents per pound for the base quality of upland cotton (Strict Low Middling 1 1/16 inch, micronaire 3.5 through 4.9, at average U.S. location).

In accordance with section 103A(c)(1)(D) of the 1949 Act, it has been determined that the establishment "target" price will be 72.9 cents per pound.

Authority: 7 U.S.C. 1444–1 and 1445b–4; 15 U.S.C. 714b and 714c.

Signed at Washington, DC on January 8, 1990.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 90–951 Filed 1–12–90; 8:45 am]

BILLING CODE 3410–05–M

Farmers Home Administration

Housing Preservation Grant

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The Farmers Home Administration (FmHA) announces that it is soliciting competitive applications under its Housing Preservation Grant (HPG) program. This action is taken to comply with Agency regulations found in 7 CFR part 1944, subpart N, which require the Agency to announce the opening and closing dates for receipt of preapplications for HPG funds from eligible applicants. The intended effect of this Notice is to provide public agencies, private nonprofit organizations, and other eligible entities notice of these dates.

DATES: FmHA hereby announces that it will receive preapplications on January 16, 1990. The closing date for acceptance by FmHA of preapplications is April 16, 1990. This period will be the only time during the current fiscal year that FmHA accepts preapplications. Preapplications must be received by or postmarked on or before this date.

ADDRESSES: Submit preapplications to FmHA field offices; applicants must contact their State FmHA Office for this information.

FOR FURTHER INFORMATION CONTACT: Sue. M. Harris, Senior Loan Officer, Multi-family Housing Processing Division, FmHA, USDA, Room 5337, South Agriculture Building, Washington, DC 20250, telephone (202) 382–1660 (this is not a toll free number.)

SUPPLEMENTARY INFORMATION: 7 CFR part 1944, subpart N provides details on what information must be contained in

the preapplication package. Entities wishing to apply for assistance should contact the FmHA State Office to receive further information and copies of the application package. Eligible entities for these competitively awarded grants include State and local governments, nonprofit corporations, Federally recognized Indian Tribes, and consortia of eligible entities.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.443-Housing Preservation Grants. This program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V; 49 FR 29112, June 24, 1983). Applicants are also referred to 7 CFR part 1944, section 1944.674 and 1944.676 (d) and (e) for specific guidance on these requirements relative to the HPG program.

The funding instrument for the Housing Preservation Grant program will be a grant agreement. The term of the grant can vary from 1 to 2 years, depending on available funds and demand. No maximum or minimum grant levels have been set, although, based on FY 1988 and FY 1989 experience, the Agency anticipates that the average grant will be between $100,000 and $150,000 for one-year proposal. For FY 1990, $19,140,000 is available and has been distributed under a formula allocation to States pursuant to 7 CFR part 1940, subpart L, Methodology and Formulas for Allocation of Loan and Grant Funds.

Decisions on funding will be based on the preapplications, and notices of action on the preapplications should be made within 60 days of the closing date.

Dated: January 9, 1990.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 90-950 Filed 1-12-90; 8:45 am]

BILLING CODE 3410-07-M

Food and Nutrition Service

Food Stamp Program; Maximum Allotments for Alaska, et al.

AGENCY: Food and Nutrition Service, USDA.

ACTION: General notice.

SUMMARY: The Department of Agriculture is updating maximum food stamp allotments for participating households in Alaska, Hawaii, Guam, and the Virgin Islands. These adjustments, required by law, take into account changes in the cost of living.

EFFECTIVE DATE: October 1, 1989.

FOR FURTHER INFORMATION CONTACT: Judith M. Seymour, Supervisor, Eligibility and Certification Regulations Section, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, Alexandria, Virginia 22302, (703) 756-3496.

SUPPLEMENTARY INFORMATION:

Publication

As required by law, State agencies implemented this action on October 1, 1989 based on advance notice of the new amounts. Based on regulations published at 47 FR 46485-46487 (October 19, 1982) annual statutory adjustments to the maximum allotments are issued by General Notices published in the **Federal Register** and not through rulemaking proceedings.

Classification

Executive Order 12291. This action has been reviewed under Executive Order 12291 and Secretary's Memorandum 1512-1. The Department does not consider it a major action because it will not increase the Food Stamp Program's cost by more than $100 million. It will not result in a major increase in costs or prices except to the Federal Government, nor will it affect competition, productivity, employment, investment or innovation.

Executive Order 12372. The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final rule related Notice(s) to 7 CFR part 3015, subpart V (Cite 48 FR 29115, June 24, 1983; or 48 FR 54317, December 1, 1983, as appropriate, and any subsequent notices that may apply), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act. G. Scott Dunn, Acting Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The action will increase the amount of money spent on food through food stamps. However, this money will be distributed among the nation's food vendors, so the effect on any one vendor will not be significant.

Paperwork Reduction Act. This action does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB).

Benefits. This action increases maximum food stamp allotments based on the changing cost of living.

Background

Thrifty Food Plan (TFP). The TFP is a plan for the consumption of foods of different types (food groups) that families might use to provide nutritious meals and snacks for family members. The plan suggests amounts of food for men, women, and children of different ages, and it meets most dietary standards. The cost of the TFP is adjusted to reflect changes in the costs of the food groups.

The TFP is also the basis for establishing maximum food stamp allotment levels. Maximum food stamp allotments are adjusted periodically to reflect changes in cost levels. Section 3(o) of the Food Stamp Act of 1977, as amended by Pub. L. 100-435, provides that the next adjustment will take place on October 1, 1989, based upon 102.05 percent of the June 1989 cost of the TFP for a family of four persons consisting of a man and woman ages 20-50 and children 6-8 and 9-11. In June 1989, the cost of the TFP was $401.70 in Alaska, $493.50 in Hawaii, $478.30 in Guam, and $417.20 in the Virgin Islands.

The maximum food stamp benefit, or allotment, is paid to households which have no net income. For households which have some income, their allotment is determined by reducing the maximum allotment for their household size by 30 percent of the household's net income. To obtain the maximum food stamp allotment for each household size, the TFP costs for the four-person household were increased by 2.05 percent, divided by four, multiplied by the appropriate household size and economy of scale factor, and the final result was rounded down to the nearest dollar.

Maximum food stamp benefits for Guam and the Virgin Islands cannot exceed those in the 50 States and DC, so they are based upon the lower of their respective TFPs or the TFP for rural II Alaska. TFPs for Alaska and Hawaii are based upon an average for the six-month period that includes June 1989. The average provides a proxy for actual June 1989 TFP costs. In addition, in Alaska, where the TFP is based on Anchorage prices, the Anchorage TFP was increased by 2.05 percent to obtain an adjusted TFP (reflecting the provisions of the Hunger Prevention Act). The urban allotment is the higher of the allotment that was in effect in urban areas on October 1, 1985 or 100.79 percent of the adjusted Anchorage TFP. The allotment for rural I areas is the higher of the allotment that was in effect in each area on October 1, 1985 or 128.52 percent of the adjusted Anchorage TFP.

(Thus, the allotment for Nenana, Alaska will be at the previous level for rural Alaska.) The rural II allotment is 156.42 percent of the adjusted Anchorage TFP. For further information concerning the allotments for urban Alaska, rural I Alaska, Nenana, and rural II Alaska, see 50 FR 13759–13761. Allotments for Hawaii, Guam and the Virgin Islands are also based on 102.05 percent of the June 1989 TFP to reflect the provisions of the Hunger Prevention Act.

The following table shows the new allotments for urban Alaska, rural I Alaska, rural II Alaska, Nenana, Hawaii, Guam, and the Virgin Islands.

ALLOTMENT AMOUNTS [1]

[October 1989, as adjusted]

Household size	Urban Alaska [2]	Rural I Alaska [3]	Rural II Alaska [4]	Nenana [5]	Hawaii	Guam [6]	Virgin Islands [6]
1	$123	$158	$192	$158	$151	$146	$127
2	227	289	352	290	276	268	234
3	325	414	504	415	396	384	335
4	413	526	641	527	503	488	425
5	490	625	761	626	598	579	505
6	568	750	913	752	717	695	606
7	650	829	1009	831	793	768	670
8	743	948	1154	949	906	878	766
Each additional member	+93	+119	+144	+119	+113	+110	+96

[1] Adjusted to reflect the cost of food in June, adjustments for each household size, economies of scale, a 1.0205 percent increase in the TFP and rounding.
[2] These levels are 100.79 percent of the Anchorage TFP, as adjusted.
[3] These levels are 128.52 percent of the Anchorage TFP, as adjusted. With the exception of Nenana, all rural 1 areas formerly received the allotment for urban Alaska.
[4] These levels are 156.42 percent of the Anchorage TFP, as adjusted.
[5] These levels were in effect in Nenana on October 1, 1985. They are higher than the allotment for rural 1 Alaska.
[6] Adjusted to reflect changes in the cost of food in the 48 States and D.C., which correlate with price changes in these areas. Maximum allotments in these areas cannot exceed those in rural II Alaska.

Maximum allotments for the 48 States and D.C. were published in a separate notice in the **Federal Register**. These adjustments can be made sooner than the adjustments for Alaska, Hawaii, Guam, and the Virgin Islands because the date to accomplish the update for the 48 States and DC are available sooner.

Authority: 7 U.S.C. 2011–2029

Dated: January 5, 1990.

G. Scott Dunn,

Acting Administrator.

[FR Doc. 90–978 Filed 1–12–90; 8:45 am]

BILLING CODE 3410–30–M

Rural Electrification Administration

The Middle Tennessee Electric Membership Corp.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration.

ACTION: Finding of no significant impact relating to the construction of an office and warehouse facility in Wilson County, Tennessee.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), and REA Environmental Policies and Procedures (7 CFR part 1794), has made a Finding of No Significant Impact (FONSI) with respect to the construction of an office and warehouse facility in Wilson County, Tennessee. The Middle Tennessee Electric Membership Corporation (Middle Tennessee EMC) has requested REA's approval to construct the project.

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

SUPPLEMENTARY INFORMATION: REA, in accordance with its environmental policies and procedures, required that Middle Tennessee EMC develop a Borrower's Environmental Report (BER) reflecting the potential impacts of the proposed facility. The BER, which includes input from certain local and state agencies, has been adopted as REA's Environmental Assessment (EA) for the project in accordance with 7 CFR 1794.61. REA has concluded that the BER represents an accurate assessment of the environmental impacts of the project. The project will allow Middle Tennessee EMC to expand its office and maintenance facilities to met the needs of its service area.

The office and warehouse facility will consist of a 13,300 square foot sq. ft.) office building, a 3,600 sq. ft. warehouse, a 325 sq. ft. drive-in window canopy, a 5,000 sq. ft,. service bay/platform shop, a 21,500 sq. ft. transformer storage area, a 8,500 sq. ft. pole storage area and related gravel, concrete and asphalt surfacing. There will be underground petroleum storage tanks on site.

REA has concluded that the proposed project will have no impact on wetlands, prime farmlands, floodplains, threatened or endangered species or critical habitat, property listed or eligible for listing in the National Register of Historic Places, or water quality.

Alternatives examined for the proposed project were no action and construction of the facilities at the proposed site. REA determined that there is a demonstrated need for the project and constructing it at the preferred site will have no significant impact to the environment.

REA has concluded that its approval to allow Middle Tennessee EMC to construct the proposed project does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, REA has reached a FONSI with respect to its action related to the project.

Copies of the EA and FONSI can be obtained from REA at the address provided herein or at the office of The Middle Tennessee Electric Membership Corporation, 810 Commercial Court, Murfreesboro, Tennessee 37130.

In accordance with REA Environmental Policies and Procedures, 7 CFR part 1794, Middle Tennessee EMC published a notice and advertisement in the "Lebanon Democrat" which has a general circulation in Wilson County, Tennessee. The notice appeared in the November 7, 1989 issue. The notice

described the project, announced the availability of the BER and gave information where the BER could be obtained for review and where comments could be sent. The advertisement appeared in the same issue of the newspaper and briefly described the project and referred the reader to the legal notice. The public was given at least 30 days to respond to the notice. No responses to the notice were received by Middle Tennessee EMC or REA.

Dated: January 8, 1990.

John H. Arnesen,

Assistant Administrator—Electric.

[FR Doc. 90-979 Filed 1-12-90; 8:45 am]

BILLING CODE 3410-15-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Arab Republic of Egypt

January 8, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 16, 1990.

FOR FURTHER INFORMATION CONTACT: Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

During recent negotiations between the Governments of the United States and the Arab Republic of Egypt, agreement was reached, effected by a Memorandum of Understanding (MOU) dated December 5, 1989, to extent their current bilateral textile agreement through December 31, 1991. The U.S. Government will control imports during the first agreement period, January 1, 1990 through December 31, 1990. A formal exchange of notes will follow.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 54 FR 50797, published on December 11, 1989).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 8, 1990.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and the Arrangement Regarding International Trade in Textiles done in Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Memorandum of Understanding dated December 5, 1989, between the Governments of the United States and the Arab Republic of Egypt; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 16, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Egypt and exported during the twelve-month period which begins on January 1, 1990 and extends through December 31, 1990, in excess of the following levels of restraint:

Category	12-month restraint limit [1]
218-220, 224-227, 313-317 and 326, as a group.	61,317,029 square meters.
Sublevels in the group:	
218	2,508,000 square meters.
219	14,421,000 square meters.
220	14,421,000 square meters.
224	14,421,000 square meters.
225	14,421,000 square meters.
226	14,421,000 square meters.
227	14,421,000 square meters.
313	26,481,090 square meters.
314	14,421,000 square meters.
315	16,934,710 square meters.
317	14,421,000 square meters.
326	2,508,000 square meters.
Limits not in a group:	
300/301	5,632,768 kilograms of which not more than 788,587 kilograms shall be in Category 301.
339	684,014 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.

Imports charged to these category limits for the period January 1, 1989 through December 31, 1989 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-897 Filed 1-12-90; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Software Master Plan, Availability and Meeting

TITLE: Department of Defense Software Master Plan.

ACTION: Notice of availability and meeting.

SUMMARY: A Department of Defense (DoD) Software Master Plan is being developed through the collaborative efforts of numerous offices and organizations within the Department of Defense (DoD), under the auspices of the Defense Acquisition Board Science and Technology Committee. This document will be available for review and comment by the public in late February 1990. A public forum will be held April 3-5, 1990, to obtain input from the public on the draft document.

The DoD Software Master Plan provides a consolidated approach for addressing the challenges presented to the DoD today by the escalating development, utilization and cost of software in our Defense systems. The document is organized into six major sections corresponding to the following mechanisms available to the DoD to effect the process and characteristics of software:

(1) Software acquisition and life cycle management,

(2) Government software policies,

(3) Organizational coordination/cooperation,

(4) Personnel,

(5) The software technology base, and
(6) Software technology transition.

For each of these mechanisms, the related problem areas are addressed, goals are identified, and specific actions that are required to accomplish those goals are enumerated.

A DoD Software Master Plan Public Forum will be held April 3–5, 1990, at the Ramada Hotel—Tysons Corner at 7801 Leesburg Pike in Falls Church, Virginia. The purpose of this forum is to obtain public comment on the Draft DoD Software Master Plan. The forum will consist of a general session in which DoD personnel will present the various sections of the Plan; smaller, parallel breakout sessions for detailed discussion and comment on the six major sections of the Plan; and a closing general session to report on the results of the breakout group sessions. The tentative agenda is as follows:

Tentative Agenda: DoD Software Master Plan Public Forum

Tuesday, April 3

8:00 a.m.—Registration
9:00 a.m.—Opening Remarks by Dr. George Millburn, Deputy Director of Defense Research and Engineering for Research and Advanced Technology
9:30 a.m.—Presentation and Discussion of the DoD Software Master Plan
12:00 p.m.—Lunch (Not Provided)
1:30 p.m.—Presentation and Discussion of the DoD Software Master Plan (cont'd)
4:30 p.m.—Adjourn

Wednesday, April 4

9:00 a.m.—Parallel Breakout Sessions
1. Acquisition and Life Cycle Management
2. Policy
3. Personnel
4. Organizational Coordination/ Cooperation
5. Technology Base
6. Technology Transition

12:00 p.m.—Lunch (Not Provided)
1:30 p.m.—Parallel Breakout Sessions (cont'd)
4:30 p.m.—Adjourn

Thursday, April 5

9:00 a.m.—Reports by Breakout Session Chairs
12:00 p.m.—Adjourn

A registration fee of $30 is being charged to all attendees to help defray the costs of conducting the public forum. Participants are encouraged to pre-register by March 21, 1990; attendance at the public forum will be limited to the first 500 people registered.

DATES: April 3–5, 1990.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the draft DoD Software Master Plan or a registration form for the DoD Software Master Plan Public Forum, interested parties should contact:

Ms. Karen Marinoff,
DoD Software Master Plan Public Forum, Institute for Defense Analyses/CSED, 1801 N. Beauregard St., Alexandria, VA 22311, (703) 824–5506,' (703) 820–9680 (FAX).

Dated: January 9, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Departament of Defense.

[FR Doc. 90–894 Filed 1–12–90; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Record of Arrivals and Departures of Vessels at Marine Terminals; ENG Form 3926; and OMB Control Number 0710–0009.

Type of Request: Extension.

Average Burden Hours/Minutes Per Response: 30 mins.

Frequency of Response: Monthly.

Number of Respondents: 600.

Annual burden Hours: 3,600.

Annual Responses: 7,200.

Need and Uses: The USACE utilizes ENG Form 3925 in conjunction with ENG Form 3926 as its basic source of input to conduct its Waterborne Commerce Statistics program. The anual publication, "Waterborne Commerce of the United States—part 1–5" are the result of said statistics program.

Affected Public: Businesses or other for-profit; Small businesses or organizations.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Dr. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

Dated: January 9, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–893 Filed 1–12–90; 8:45 am]

BILLING CODE 3810–01–M

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Notice as published on December 8, 1989, at 54 FR 50635 that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Technology Surprise Task Force will meet on February 15–16, 1990 at in Los Alamos, New Mexico. Because of operational necessity, the location of the meeting has been changed to 4401 Ford Avenue, Alexandria, Virginia.

In accordance with 5 U.S.C. section 552b(e)(2), the meeting rescheduling is publicly announced at the earliest practical time.

Dated: January 10, 1990.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc 90–928 Filed 1–12–90; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Washington State Ecology Department; Noncompetitive Grant Award

AGENCY: Richland Operations Office, DOE.

ACTION: Notice of noncompetitive grant award to the State of Washington.

SUMMARY: The Department of Energy, Richland Operations Office, announces that it intends to issue a grant award to the State of Washington, Department of Ecology.

Grant Award Number: DE–FG06–90RL11883.

Scope of Project: Section 107 of CERCLA provides that the Government and States are generally entitled to recover response costs incurred with regard to cleanup activities at National Priorities List (NPL) sites, as long as such costs are not inconsistent with the national contingency plan. Four areas of the Department of Energy's Hanford Site have been listed on the NPL. Further, the

Department of Energy, has determined it to be in the Government's best interest to pay States reasonable response costs incurred under Interagency Agreements for Environmental Cleanup of such sites. The Hanford Federal Facility Agreement and Consent Order (Agreement) entered into on May 15, 1989, consitutes such an agreement. Therefore, pursuant to DOE policy the State of Washington is eligible to recover response costs in relation to work performed at the Hanford Site.

The general types of activities which may be set forth in the grant include reviewing documents, following DOE's investigation work, reviewing the resulting documentation from the investigations, participating in the public review and participation process, conducting independent sampling analysis, oversight of DOE field work/investigation, etc.

DOE and the State of Washington, Department of Ecology (WDOE), shall negotiate funding for the first year of this project estimated to be approximately $1,000,000. Renewals will be on an annual basis subject to the availability of funds for such purposes and contingent upon submission of a current application from the State of Washington. It is anticipated that the first award will be issued in early 1990.

FOR FURTHER INFORMATION CONTACT: Marcia N. Roske, U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352, Telephone: (509) 376-7265.

Dated: December 21, 1989.

Robert D. Larson,

Director, Procurement Division Richland Operations.

[FR Doc. 90-968 Filed 1-2-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[Docket No. PP-89]

Availability of a Draft Environmental Impact Statement and Notice To Conduct Public Hearings

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of availability of a draft environmental impact statement and notice to conduct public hearings.

SUMMARY: The Department of Energy (DOE) has published a draft environmental impact statement (EIS) (DOE/EIS-0141-D) to assess the environmental impacts of a proposed DOE action: to grant (with terms and conditions) or to deny a Presidential permit authorizing Washington Water Power Company (WWP) to construct, connect, operate, and maintain electric transmission facilities at the U.S.-Canadian border.

Comments on the content of the draft EIS are invited from interested persons, organizations and agencies. Public hearings will be held at several locations along the proposed route of the line which has been evaluated in the draft EIS.

DATES: Written comments submitted to the DOE should be postmarked by March 28, 1990, to ensure consideration in preparation of the final EIS. Oral comments will be accepted at the public hearings to be held on January 31, 1990, and February 1, 1990, (schedule given below). Parties desiring to make oral comments at a hearing should notify the DOE at the address below not later than one week prior to the hearing so that the DOE may arrange a schedule for presentations.

ADDRESS: Requests for copies of the draft EIS, written comments on the draft EIS, requests to present oral comments at the hearings, and requests for further information concerning this draft EIS should be directed to: William H. Freeman, Office of Fuels Programs (FE-52), Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Requests to present oral comments at the hearings and requests for copies of the draft EIS also will be accepted by telephone at 202-586-5883.

For general information on the procedures followed by the DOE in complying with the requirements of the National Environmental Policy Act (NEPA), contact:

Carol Borgstrom, Director, Office of NEPA Project Assistance (EH-25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202-586-4600;

Steve Ferguson, U.S. Department of Energy, Office of General Counsel (GC-11), 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202-586-6947.

SUPPLEMENTARY INFORMATION:

I. Background

On October 15, 1987, WWP filed an application with the DOE for a Presidential permit pursuant to Executive Order 10485, as amended by Executive Order 12038, to construct, connect, operate, and maintain a double-circuit 230 kilovolt overhead transmission line which would interconnect with British Columbia Hydro and cross the U.S. international border near the city of Trail, British Columbia, and the town of Northport, Washington. The length of the proposed line is approximately 118 miles (from the international boundary to the proposed Marshall substation, in the vicinity of Spokane, Washington) and would require all new right-of-way. The two circuits will be capable of transmitting 800 to 1,200 megawatts (MW) of firm power from British Columbia Hydro to WWP for distribution in the Pacific Northwest.

The purpose of the proposed transmission line, according to the applicant, is to provide the customers of WWP and the Pacific Northwest Region with a future economic source of power. The application notes the need for additional supplies of peaking power for both WWP and the Pacific Northwest Region as early as 1993, and projects additional regional power needs of up to 210 MW and 550 MW, respectively, by the year 2000.

Notice of receipt of this application was given in the **Federal Register** on November 9, 1987 (52 FR 43101), establishing December 9, 1987, as the date by which all comments, protests, and petitions to intervene were to be filed with the DOE. As a result of numerous requests made to the DOE, this period was extended to January 9, 1988 (52 FR 47038).

Ten petitions to intervene were received in response to the initial **Federal Register** notice. The ten petitioners included Bonneville Power Administration (BPA), Neighbors Opposed to Power Exploitation (NOPE, a local citizens' group), Arizona Public Service Company (which later withdrew its petition to intervene), and seven individuals who either lived in or owned property in the vicinity of the proposed transmission line.

On February 25, 1988, the DOE issued an Order granting intervention status to all ten petitioners.

II. EIS Preparation

The DOE published a notice in the **Federal Register** (53 FR 12055) on April 12, 1988, announcing its intent to prepare an EIS and to conduct public scoping meetings on the WWP project. The DOE received numerous comments on the proposed scope of the EIS. The public meetings were held in the State of Washington on May 3-5, 1989, in the cities of Spokane, Colville, and Newport, respectively. Comments given at the scoping meetings were documented through transcripts and were considered in the preparation of the draft EIS.

The draft EIS identifies for analysis and assessment the following topics and

issues: 1) Preliminary definition of environmental issues (those associated with transmission line construction, operation and maintenance, as well as other specific environmental issues); 2) preliminary definition of alternatives (the environmental impacts to be expected from each reasonable alternative); and 3) mitigation alternatives (such as design, route selection, construction practices and timing, right-of-way clearing procedures, and right-of-way maintenance practices).

III. Comment Procedures

A. Availability of Draft EIS

Copies of the draft EIS have been distributed to Federal, State, and local agencies. Copies of the draft EIS also have been distributed to organizations, environmental groups, and individuals known to be interested in or affected by the proposed project. Additional copies of the document may be obtained by contacting the DOE at the address given above.

Copies of the draft EIS also are available for inspection at the DOE's reading room and at public libraries through the area traversed by the proposed transmission line. The locations where the document is available for inspection are as follows:

1. DOE Reading Room

—Freedom of Information Reading Room, U.S. Department of Energy, RM 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585

2. Public Libraries

—Chewelah Public Library, Box 87, Chewelah, WA 99109
—Colville Public Library, 195 S. Oak, Colville, WA 99114
—Kettle Falls Public Library, 605 Meyers St., Kettle Falls, WA 99141
—Pend Oreille County Library District, P.O. Box 1708, 116 S. Washington Ave., Newport, WA 99156
—Calispell Valley Library, 1st Street, Cusick, WA 99156
—Pend Oreille County Library, 112 Central, Ione, WA 99156
—Metalines Community Library, 201 E. 5th Ave., Metaline Falls, WA 99156
—Spokane County Library District, N. 2901 Argonne Rd., Spokane, WA 99212–2101
—Spokane Public Library, Comstock Bldg., 906 Main Ave., Spokane, WA 99201–0976.

B. Written Comments

Interested parties are invited to provide comments on the content of the draft EIS to the DOE at the above address. Envelopes should be marked "Attention: WWP Draft EIS Comments." Comments should be postmarked no later than March 19, 1990, to ensure consideration in preparing the final EIS. Comments postmarked after March 19, 1990, will be considered to the extent practicable.

C. Public Hearings

1. Participation Procedure

The public also is invited to provide comments on the draft EIS to the DOE in person at the scheduled public hearings. The purpose of the hearings is to receive substantive comments related to the draft EIS. It is not the purpose of the hearings to receive either general endorsements or criticisms of the project. The hearings will not be judicial or evidentiary-type hearings. Advance registration for presentation of oral comments at the hearings will be accepted up to one week prior to the hearing date by telephone or by mail at the office listed above. Requests to speak at a specific time will be honored, if possible. Registrants are allowed only to register themselves to speak and must confirm the time they are scheduled to speak at the registration desk the day of the hearing. Persons who have not registered in advance may register to speak at the hearings to the extent time is available. To ensure that as many persons as possible have the opportunity to present comments, 5 minutes will be allotted to each speaker. Persons presenting comments at the hearings are requested to provide the DOE with written copies of their comments at the hearing, if possible. Hearings will begin at the scheduled hours and will continue until those persons present and desiring to speak have had the opportunity to do so or until the time the hearing is scheduled to end, whichever occurs earliest. Additional time for meetings may be allocated if needed.

2. Hearings Schedules and Locations

Hearings will be held at each of the following locations on the dates indicated:

January 31, 1990:

Holiday Inn West, Ponderosa & Hemlock Conference Rooms, W. 4212 Sunset Blvd., Spokane, WA 99204, Time: 7 p.m. to 10 p.m.

February 1, 1990:

Colville Community Center, 420 E. Hawthorne, Colville, WA 99114, Time: 1 p.m. to 4 p.m.

February 1, 1990:

Pend Oreille County Public Utility District No. 1, Conference Room, N. 130 Washington, Newport, WA 99156, Time: 7 p.m. to 10 p.m.

3. Conduct of Hearings

The DOE has established basic rules and procedures for conducting the hearings. Rules needed for the orderly conduct of the hearings will be announced by the presiding officer at the start of the hearings. Clarifying questions regarding statements made at the hearings may be asked only by DOE personnel conducting the hearings. There will be no cross-examination of persons presenting statements. A transcript of the hearings will be prepared and made available for purchase to interested parties.

Issued in Washington, DC on December 28, 1989.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 90–1010 Filed 1–12–90; 8:45 am]

BILLING CODE 6450–01–M

Invitation for Public Views and Comments on the Conduct of the 1990 Clean Coal Solicitation; Meeting

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of meetings to invite public views and comments on the conduct of the 1990 Clean Coal Technology solicitation.

INTRODUCTION: Public Law Number (Pub. L. No.) 101–121, "An Act Making Appropriations for the Department of the Interior and Related Agencies for the Fiscal Year Ending September 30, 1990, and for Other Purposes" (the "Act"), enacted on October 23, 1989, provides, among other things, that $600 million be made available for each of two separate solicitations for additional Clean Coal Technology (CCT) projects to "demonstrate technologies capable of replacing, retrofitting or repowering existing facilities and shall be subject to all provisos contained under this head [Clean Coal Technology] in Public Laws 99–190, 100–202, and 100–446 as amended by this Act." Furthermore, the Act stipulates that "the request for proposals * * * shall be issued no later than June 1, 1990, and projects resulting from such a solicitation must be selected no later than February 1, 1991 * * *"

BACKGROUND: The first CCT solicitation (CCT–I) was authorized by

Pub. L. No. 99–190 (enacted on December 19, 1985), which provided $400 million for cost-shared projects. This action resulted in the first 11 projects that now comprise DOE's CCT Program.

Subsequent CCT solicitations, including the presently pending CCT–IV, are related to the decision by President Reagan on March 18, 1987, to seek $2.5 billion to fund the demonstration of innovative clean coal technologies over a five-year period. President Reagan directed that projects be selected, to the extent possible, using the criteria recommended by the Special Envoys on Acid Rain, Drew Lewis of the United States, and William Davis of Canada. In January of 1986, the appointees issued the "Joint Report of the Special Envoys on Acid Rain," also known as "the Lewis/Davis Report." The Special Envoys provided twelve recommendations, the first one of which was that the:

> U.S. government should implement a five-year, five-billion dollar control technology commercial demonstration program. The federal government should provide half the funding . . . for projects which industry recommends, and for which industry is prepared to contribute the other half of the funding.

Pub. L. No. 100–202 (enacted on December 22, 1987), provided $575 million for the conduct of the second CCT solicitation (CCT–II), which called for projects to demonstrate emerging clean coal technologies capable of retrofitting or repowering existing facilities. On September 28, 1988, DOE announced the 16 proposals that were selected to proceed to award of cooperative agreements. Fifteen of these projects are active currently.

Most recently, Pub. L. No. 100–446, "An Act Making Appropriations for the Department of the Interior and Related Agencies for the Fiscal Year Ending September 30, 1989, and for Other Purposes," enacted on September 27, 1988, provided $575 million to be made available for additional CCT demonstration projects, and stipulated that the request for proposals (CCT–III) should be issued by May 1, 1989, with proposals due within 120 days thereafter. On December 21, 1989, the Secretary of Energy announced the selection of 13 proposals, thereby bringing the total number of projects to date in the CCT Program to 39.

PURPOSE OF THE MEETINGS: In general, the goal of the fourth CCT solicitation (CCT–IV) will be to implement the legislative guidance contained in Pub. L. No. 101–121 and the accompanying Conference Report (House Report 101–264), and to further implement the Administration's decision to provide funding of $2.5 billion for the demonstration of innovative clean coal technologies over a five-year period.

The CCT program will yield significant benefits to the United States, not only in terms of cleaner air and the increased use of coal, our most abundant energy resource, but also by:

- Addressing the concerns regarding global warming by significantly increasing the efficiency of power generation,
- Improving the reliability, reducing the cost, and improving the environmental performance of electric power stations by developing modular technologies, such that a number of small units would work together, rather than depending on a single large installation,
- Greatly enhancing U.S. technological leadership and international competitiveness,
- Benefiting both eastern and western states by making available more cost-effective, fuel-flexible, power and industrial systems capable of using the full spectrum of U.S. coals,
- Improving our position in international trade by providing advanced technology that would make American coal more attractive to foreign markets, and by reducing the cost of producing energy-intensive U.S. goods,
- Helping to ensure that the U.S. enters the 21st century with a broad array of sophisticated, cleaner, and more economical coal-based energy technologies, rather than being limited to the more costly, less effective, environmental control options available today, and
- Enhancing the long term energy security of the United States.

However, DOE is interested in exploring alternatives that may be available with regard to how the June 1, 1990, solicitation is structured. The purpose of the meetings is to provide a conduit from the public of DOE. Accordingly, DOE is issuing this Notice in order to invite the public to attend either one of two meetings, and to give interested an opportunity to present their views, comments, and recommendations with regard to the forthcoming solicitation.

Nothing in this Notice should be considered as definite, final, or binding on DOE with regard to the nature and/or content of the solicitation. The public is further advised that DOE cannot reimburse those who attend the public meetings or otherwise submit views to DOE for any expenses that they may incur in responding to this Notice.

PROPOSED OUTLINE OF THE ANTICIPATED SOLICITATION: To establish a framework for discussion and comment, it is useful to outline generally the structure of the anticipated CCT solicitation.

The solicitation will be consistent with the Report guidance, which provides, among other things, that, projects selected "shall be subject to all provisos contained under this head in Public Laws 99–190, 100–202, and 100–446 as amended by this Act."

DOE anticipates that the solicitation will invite applications for financial assistance awards and, accordingly, will be governed by DOE's Financial Assistance Rules, 10 CFR part 600 (the "Rules"). The Rules establish uniform policies and procedures for the award and administration of DOE grants and cooperative agreements. (All three previous PONs (1986, 1988, and 1989) specified that cooperative agreements would be awarded.)

Project sponsors would be required to share the costs of the projects, such that DOE would not finance more than 50 percent of the total project cost as of the date of award, and the solicitation may require, as was the case in the three previous PONs, that the cost sharing by the offeror be at least 50 percent in each of the project phases (in CCT–III, these were design, construction, and operation).

Costs would be shared between DOE and the offeror on an "as expended," dollar-for-dollar, basis. The solicitation may include Qualification Criteria, and provide that failure to meet any one, or more than one, of these criteria would result in rejection of the proposal and the cessation of its consideration for financial assistance. The Qualification Criteria stipulated in the previous PON (CCT–III) were:

- The proposed demonstration project or facility must be located in the United States.
- The proposed demonstration project must be designed for and operated with coal(s). These coals must be from mines located in the United States.
- The proposer must agree to provide a cost share of at least 50 percent of total allowable project cost, with at least 50 percent in each of the three project phases.
- The proposer must have access to, and use of, the proposed site and any proposed alternate site(s) for the duration of the project.
- The proposed project team must be identified and firmly committed to fulfilling its proposed role in the project.
- The offeror agrees that, if selected, it will submit a "Repayment Plan"

consistent with the requirements stated in the PON.

• The proposal must be signed by a responsible official of the proposing organization authorized to contractually bind the organization to the performance of the Cooperative Agreement in its entirety.

If the Qualification Criteria are met, a proposal would undergo preliminary evaluation, if such a phase is included in the solicitation. As noted above for the Qualification Criteria, failure to meet one or more of the Preliminary Evaluation requirements would result in rejection of the proposal and its elimination from further consideration for financial assistance. Preliminary Evaluation requirements were employed in the previous PON: included were stipulations that the proposal must be consistent with the objectives of the PON; the proposal must contain sufficient business and management, technical, cost, and other information to enable Comprehensive Evaluation (discussed below); and, the proposal must include an explicit funding plan for the project.

Once a determination is made that a proposal meets both (as may be applicable) the Qualification Criteria and the Preliminary Evaluation requirements, it would then enter the Comprehensive Evaluation phase and be evaluated in accordance with the criteria stated in the solicitation. The solicitation would state the different evaluation criteria, and describe the relative weights assigned to the Technical, Business and Management, and Cost aspects of the proposal. The solicitation also would provide guidance and instructions to prospective offerors on how to prepare and submit the proposal.

Evaluation criteria will be developed that are consistent with the guidance in the Act and the Report such that selected projects shall be subject to all of the provisions (relevant to the solicitation) that were provided in Pub. L. No. 99–190, which governed the 1986 PON, in Pub. L. 100–202, which governed the 1988 PON, and in Pub. L. No. 100–446, which governed the 1989 PON, as amended by the Act.

In developing the evaluation criteria, DOE will consider factors that would contribute to achieving the goals established by the Congress and by the Administration. Such considerations include reducing additional forms of pollution from coal combustion (that is, in addition to sulfur dioxide and oxides of nitrogen, the "greenhouse gases" such as carbon dioxide). Other factors under consideration would be the potential for reducing the cost of producing additional electric power and the expanded utilization of U.S. coals. The public is invited to comment on these factors, and to suggest others that might be used to evaluate proposed CCT projects.

The final consideration with regard to the selection of a proposal is the application of the Program Policy Factors (PPF). These factors are used to identify the proposals that, in the aggregate, will achieve best the CCT program objectives.

SUBJECTS OF PARTICULAR INTEREST: DOE wishes to receive public views, comments, and recommendations on any and all aspects of the forthcoming CCT–IV PON that will assist DOE with the preparation of a solicitation that optimally balances the needs of the prospective offerors and the goals and objectives of the CCT Program. In that regard, there are a number of specific issues and concerns that DOE is particularly interested in receiving public comments on, as listed and described below. Please note, however, that this is not an all-inclusive list of subjects of interest, and new or different topics may be introduced or added at the public meetings themselves, either by the public attendees or by DOE.

1. Reconciling Foreign Participation With U.S. Interests. The first three CCT solicitations have placed no limitations on foreign participation, except for the requirements that the demonstration projects be sited in the U.S., and use U.S. coals. Recently, however, some critics have contended that government funds should be used to benefit only U.S. companies. What modifications, if any, should DOE consider in CCT–IV regarding foreign participation?

2. Recoupment of the Government's Cost Share. Current DOE policy is to recover funds from a CCT project up to the Government's contribution to the project. For example, projects selected in CCT–III will be subject to recoupment if the projects are successful and achieve commercial application. However, under this PON, recoupment cannot exceed DOE's contribution to the project, nor continue beyond 20 years from the end of the demonstration period; recoupment ends when one of these conditions is met. DOE is interested in how well these rules have worked, and whether changes are warranted to be more equitable to potential participants in CCT–IV, and to the U.S. Government.

3. Intellectual Property Rights. Current DOE practice is to make available for publication all data generated under contracts or financial assistance agreements entered into by DOE. It has been argued that this policy can cause difficulties for the protection of the legitimate intellectual property rights of the technology owner. Some observers have argued for changes in current DOE practice to permit CCT participants, for a limited period of time, to have exclusive use of technical data generated in the course of cooperative agreements. Should DOE consider such a change or some other change and, if so, by what possible methods?

4. Carbon Dioxide Emissions and Global Warming. How should CCT–IV address the issue of carbon dioxide emissions from enhanced coal use and the concern regarding the potential for exacerbating "global warming"? CCT–III acknowledges this concern by providing extra credit for projects which reduce emissions of global warming gases. What more can DOE do in CCT–IV to better ensure the selection of projects which are improvements from a global warming perspective?

MEETINGS, LOCATIONS, AND DATES: There will be two public meetings, at the locations and dates listed below:

1. San Francisco Hilton Hotel, Hilton Square, 333 O'Farrell Street, San Francisco, California 94102 (Tel. 415–771–1400 or 800–445–8667 , at 8:30 a.m., on Tuesday, February 13, 1990.

2. The Copley Plaza Hotel, Copley Square, 138 St. James Avenue, Boston, Massachusetts 02116 (Tel. 617–267–5300 or 800–826–7539), at 8:30 a.m., on Thursday, March 1, 1990.

FORMAT OF THE MEETINGS: Both of the meetings will follow the same format, as described below. Each meeting will commence with a brief plenary session that will include introductory remarks and program overviews by DOE officials. At about mid-morning, there will be a brief recess, after which there will be concurrent Discussion Workshops led by panels of DOE officials. There will not be any formal presentations or statements in the Workshops. Attendees will be asked to engage in informal, unstructured, discussions with the panelists on the subjects described earlier in this Notice, and on such other subjects as may be introduced by members of the audience or by the panelists.

At the conclusions of the Workshops, attendees will meet in a closing plenary session. The discussions that ensued in the various Workshops, and the recommendations that resulted, will be reviewed and summarized. The meetings are expected to adjourn in the late afternoon.

PUBLIC PARTICIPATION: Individuals may attend the meetings without notification in advance to DOE, and there is no registration fee or other charge for attendance. Attendees are responsible for making their own travel and lodging arrangements. DOE will not provide any meals or other refreshments at the meetings.

Written Comments

Written comments may be submitted by individuals who are not able to attend the public meetings, and also by persons who do attend one of the meetings and subsequently wish to provide written material to DOE. Written comments that address the "Subjects of Particular Interest" described above (please indicate which of the two meetings is of particular interest to you) will be considered if they are received by January 26, 1990. Written comments with suggestions for the June 1, 1990, CCT solicitation will be considered if they are received by March 30, 1990. In all instances, written comments should be submitted in triplicate (if possible) to the address noted below:

Address for Comments

All written comments should be submitted to: Ms. Jean L. Lerch, Fossil Energy, FE–20 (GTN), U.S. Department of Energy, Washington, DC 20545, (301) 353–5357.

Issued in Washington, DC, January 8, 1990.

Michael R. McElwrath,

Acting Assistant Secretary, Fossil Energy.

[FR Doc. 90–96 Filed 1–12–90; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 89–87–NG]

Mobil Natural Gas Inc.; Application for Authorization To Import Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application for blanket authorization to import natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on December 5, 1989, of an application filed by Mobil Natural Gas Inc. (MNGI) requesting that blanket authorization previously granted in DOE/ERA Opinion and Order No. 213 (Order 213), issued January 6, 1988 (ERA Docket No. 87–19–NG), be extended for two years beginning with the first import after February 15, 1990, the expiration of its current import authorization and amended to allow MNGI to import volumes not to exceed, in the aggregate, 100 Bcf of natural gas or liquefied natural gas (LNG) from Canada or other countries. MNGI further requests that FE expedite this application because the current authorization expires on February 15, 1990.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., February 15, 1990.

ADDRESS: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, FE–50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Robert Groner, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H–087, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–1657.

Michael T. Skinker, Natural and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: MNGI is a Delaware corporation with its principal place of business in Houston, Texas. MNGI is a wholly owned subsidiary of Mobil Fairfax Inc. MNGI is engaged in the business of marketing natural gas supplies in the United States and Canada.

MNGI states that while most of its imports would come from Canada, MNGI is also interested in securing authorization to import natural gas from countries other than Canada. According to MNGI, if the authorization requested is granted, MNGI will be allowed to purchase quantities of natural gas or LNG from a variety of foreign suppliers and to resell such supplies to any suitale purchaser, including local distribution companies, pipelines, and commercial and industrial end-users. MNGI states that it contemplates acting as a purchaser-reseller and a marketer of natural gas supplies, including acting as an agent on behalf of both producers and purchasers. MNGI indicates that it may also secure transportation arrangements for the gas to be imported in the United States pursuant to agreements with specific customers. MNGI asserts that each sale will be market responsive and that imports would be accomplished using existing facilities and no new construction would be involved.

MNGI also would file reports with FE within 30 days after the end of each calendar quarter giving the details of the individual transactions. MNGI's prior quarterly reports filed with FE indicate that approximately 19.7 Bcf of natural gas were imported from February 15, 1988, through September 30, 1989.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement will be competitive and thus in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless it appears during the proceeding on this application that the grant or denial of the authorization would significantly affect the quality of the human environment, the DOE expects that no additional environmental review will be required.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to

this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial questions of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of MNGI's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 9, 1990.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–970 Filed 1–12–90; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OFENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP90–456–000, et al.]

United Gas Pipe Line Company, et al.; Natural Gas Certificate Filings

January 8, 1990.

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Company

[Docket No. CP90–456–000]

Take notice that on December 28, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP90–456–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of PSI Inc. (PSI), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a gas transportation agreement dated October 26, 1989, United proposes to transport up to 51,500 MMBtu of natural gas per day, on an interruptible basis, for PSI. United States that such gas would be transported from an existing receipt point located offshore Louisiana to an existing delivery point also located offshore Louisiana. PSI has informed United that is expects to have the full 51,500 MMBtu transported on an average day and, base thereon, estimates that the annual transportation quantity would be 18,797,000 MMBtu. United advises that the transportation service commenced on November 1, 1989, as reported in Docket No. ST90–995–000, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: February 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. Natural Gas Pipeline Company of America

[Docket No. CP90–418–000]

Take notice that on December 19, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. C90–418–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate to construct pipeline and appurtenant facilities to implement a firm transportation service on behalf of Northern Illinois Gas Company (Ni-Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural proposes to construct 15-miles of 30-inch loop in Whiteside and Lee Counties, Illinois at an estimated cost of $8.7 million in order to implement a firm transporation service of 70,000 MMBtu of natural gas per day on behalf of Ni-Gas. Natural states that the cost to construct the proposed facilities would be financed with funds on hand. Natural also states that it has existing capacity to provide 50,000 MMBtu per day of firm transportation to Iowa-Illinois Gas and Electric Company (Iowa-Illinois). Natural indicated that both firm transportation services would be provided under its existing Rate Schedule FTS. Natural estimates that facilities costing approximately $2.2 million would have to be installed on Iowa-Illinois' system in order to provide additional pressure to provide Iowa-Illinois more operational flexibility for its Cedar Rapids, Iowa, market. Natural asserts no new facilities would be required by Natural to provide the firm transportation service to Iowa-Illinois because Iowa-Illinois is an existing Rate Schedule DMQ–1 customer of Natural with the ability to convert 50,000 MMBtu per day of sales to firm transportation.

Natural states that its application is intended to be competitive with, and a partial alternative to, Northern Natural Gas Company's (Northern) application in Docket No. CP89–1841–000 which was file on July 19, 1989,[1] and is currently pending before the Commission. Natural asserts that its application and Northern's application are mutually exclusive and duplicative with regard to transportation service for Ni-Gas and Iowa-Illinois. Therefore, pursuant to § 385.212 of the Commission's Rules and Practice Procedure, Natural moves that its Docket No. CP90–418–000 and Northern's Docket No. CP89–1841–000 be consolidated.

[1] In Docket No. CP89–1841–000, Northern requests to construct facilities estimated to cost $65,570,000 in order to self-implement firm transporation services totaling 198,653 MMBtu per day on behalf of seven shippers. Included are transportation services of 70,000 MMBtu per day on behalf of Ni-Gas and 50,000 MMBtu per day on behalf of Iowa-Illinois.

Comment date: January 29, 1990, in accordance with Standard Paragraph F at the end of this notice.

3. United Gas Pipe Line Company

[Docket No. CP90–476–000]

Take notice that on January 3, 1990, United Gas Pipe Line Company, (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP90–476–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transporation service on behalf of HOUSTON GAS EXCHANGE CORPORATION (HOUSTON), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United requests authorization to transport, on an interruptible basis, up to a maximum of 103,000 MMBtu of natural gas per day for HOUSTON from receipt points located in Lousiana, Offshore Louisiana, Texas, Offshore Texas, Mississippi and Alabama to delivery points located in Louisiana, Texas, Offshore Texas, Florida, Alabama and Mississippi. United anticipates transporting an annual volume of 37,595,000 MMBtu.

United states that the transportation of natural gas for HOUSTON commenced October 19, 1989, as reported in Docket No. ST90–1103–000, for a 120–day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to United in Docket No. CP88–6–000.

Comment date: February 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. Texas Gas Transmission Corporation

[Docket No. CP90–474–000]

Take notice that on January 3, 1990, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP90–474–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Seagull Marketing Services, Inc. (Seagull Marketing) under Texas Gas' blanket certificate issued in Docket No. CP88–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas requests authorization to transport on a peak day up to 100,000 MMBtu of natural gas for Seagull Marketing, with an estimated average daily quantity of 100,000 MMBtu. On an annual basis, Seagull Marketing estimates a volume of 36,500,000 MMBtu. It is stated that gas would be received from receipt points in the States of Louisiana, offshore Louisiana, Kentucky, Texas, offshore Texas, Tennessee, Illinois, and Ohio and delivered to a point in the State of Ohio.

Texas Gas states that transportation service for Seagull Marketing commenced December 6, 1989, under the 120-day automatic provisions of § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST90–1054–000.

Comment date: February 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. Texas Gas Transmission Corporation

[Docket No. CP90–472–000]

Take notice that on January 3, 1990, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP90–472–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of TXG Gas Marketing Company (TXG) under Texas Gas' blanket certificate issued in Docket No. CP88–686–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas requests authorization to transport, on an interruptible basis, up to a maximum of 250,000 MMBtu of natural gas per day for TXG from receipt points located in Illinois, Kentucky, Louisiana, offshore Louisiana, Ohio, Tennessee, Texas and offshore Texas to delivery points located in Arkansas, Louisiana, Mississippi, Tennessee and Texas. Texas Gas anticipates transporting, on an average day 10,000 MMBtu and an annual volume of 3,250,000 MMBtu.

Texas Gas states that the transportation of natural gas for TXG commenced December 1, 1989, as reported in ST90–994–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Texas Gas in Docket No. CP88–686–000.

Comment date: February 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

6. Texas Gas Transmission Corporation

[Docket No. CP90–473–000]

Take notice that on January 3, 1990, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP90–473–000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of World Color Press, Inc. (Color Press), under Texas Gas' blanket certificate issued in Docket No. CP88–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport, on an interruptible basis, up to 1,400 MMBtu per day for Color Press. Texas Gas states that construction of facilities would not be required to provide the proposed service.

Texas Gas further states that the maximum day, average day, and annual transportation volumes would be approximately 1,400 MMBtu, 658 MMBtu and 240,000 MMBtu respectively.

Texas Gas advises that service under § 284.223(a) commenced December 2, 1989, as reported in Docket No. ST90–1052.

Comment date: February 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

7. Texas Gas Transmission Corporation

[Docket No. CP90–475–000]

Take notice that on January 3, 1990, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP90–475–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Miami Valley Resources, Inc. (Miami Valley), under Texas Gas' blanket certificate issued in Docket No. CP88–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport on an interruptible basis up to 20,000 MMBtu of natural gas on a peak day, 5,000 MMBtu on an average day and 2,000,000 MMBtu on an annual basis for Miami Valley. Texas Gas states that it would perform the transportation service for Miami Valley under Texas Gas' Rate Schedule IT. Texas Gas indicates that Miami Valley has identified 34 end users as the recipients

of the gas. It is indicated that Texas Gas would receive the gas at numerous points for delivery to a point in Warren County, Ohio.

It is explained that the service commenced December 1, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90–992. Texas Gas indicates that no new facilities would be necessary to provide the subject service.

Comment date: February 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

8. Texas Gas Transmission Corporation

[Docket No. CP90–470–000]

Take notice that on January 3, 1990, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP90–470–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service for Centran Corporation (Centran) under the blanket certificate issued in Docket No. CP88–686–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas states that pursuant to a transportation agreement dated October 24, 1989, it proposes to receive up to 15 billion Btu of natural gas per day at three specified points located in offshore Texas and redeliver the gas at a specified interconnect with the facilities of Natural Gas Pipeline Company of America located in offshore Texas. Texas Gas estimates that the peak day, average day and annual volumes would be 15,000 million Btu, 12,000 million Btu, and 4,380,000 million Btu, respectively. It is indicated that on November 25, 1989, Texas Gas initiated a 120-day transportation service for Centran under § 284.223(a), as reported in Docket No. ST90–929–000.

Texas Gas further states that no facilities need be constructed to implement the service. Texas Gas states that the service would continue on a month-to-month basis until terminated upon thirty days written notice by either party. Texas Gas proposes to charge rates and abide by the terms and conditions of its Rate Schedule IT.

Comment date: February 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

9. Transcontinental Gas Pipe Line Corporation

[Docket No. CP88–760–002]

Take notice that on December 18, 1989 [1], Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas, 77251, filed in Docket No. CP88–760–002 an amendment to its pending application filed September 2, 1988, in Docket No. CP88–760–000, as amended March 1, 1989, in Docket No. CP88–760–001, pursuant to section 7 of the Natural Gas Act, so as to reflect the decision of South Carolina Pipeline Corporation (South Carolina) to withdraw its request for transportation service and to reflect a reallocation of the resulting capacity among certain other customers which have subscribed to Transco's proposed firm winter season transportation service, together with revised precedent agreements, all as more fully set forth in the amended application which is on file with the Commission and open to public inspection.

Transco states that on August 1, 1989, South Carolina notified Transco that it no longer sought to participate as a shipper in the proposed winter season transportation service project and terminated its precedent agreement. It is indicated that Transco subsequently offered the capacity released by South Carolina (10,000 Mcf per day) to other participants in the Southern Expansion Project. In response to the offer, it is explained that Piedmont Natural Gas Company, Clinton-Newberry Natural Gas Authority, and the Cities of Fountain Inn, Greenwood, and Greer have elected to increase their nominations for winter season transportation. The individual and total customer winter season transportation nominations resulting from the reallocation are shown in the appendix.

Transco also states that its amended application includes revised precedent for all of the proposed shippers. The revised precedent agreements, it is explained, reflect an extension to May 1, 1990, of the May 1, 1989, termination dates contained in the original precedent agreements. It is indicated that the agreements also reflect the proposed increased service levels for the five shippers named above.

Comment date: January 29, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

[1] The amendment was tendered for filing on December 7, 1989, however, the fee required by § 381.207 of the Commission's Rules (18 CFR 381.207) was not paid until December 18, 1989. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

Appendix—Docket No. CP88–760–002

Shipper	Contract quantities (Mcf/d)	
	Peak months	Shoulder months
Atlanta Gas Light Co	15,000	13,500
City of Buford	2,000	1,800
Clinton Newberry Natural Gas Authority	2,000	1,800
City of Commerce	390	351
City of Covington	1,500	1,350
Fort Hill Natural Gas Authority	6,526	5,873
City of Fountain Inn	500	450
City of Greenwood	9,325	8,393
City of Greer	2,000	1,800
City of Kings Mountain	1,000	900
City of Lawrenceville	4,000	3,600
City of Lexington	2,000	1,800
Lynchburg Gas Company	1,059	953
City of Monroe	750	675
North Carolina Natural Gas Corp	16,300	14,670
Piedmont Natural Gas Corp	53,000	47,700
Public Service of North Carolina	38,000	34,200
City of Shelby	3,500	3,150
City of Social Circle	250	225
City of Sugar Hill	1,000	900
Tri-County Natural Gas Co	850	765
City of Union	1,000	900
Georgia United Cities Gas Co	3,800	3,420
S.C. United Cities Gas Co	750	675
City of Winder	500	450

10. Texas Gas Transmission Corporation

[Docket No. CP90–471–000]

Take notice that on January 3, 1990, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed a request with the Commission in Docket No. CP90–471–000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas for Equitable Resources Marketing Company (Equitable Resources), a natural gas marketer, under Texas Gas' blanket certificate issued in Docket No. CP88–686–000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

Texas Gas proposes an interruptible natural gas transportation service of 100,000 MMBtu equivalent per peak day, 20,000 MMBtu equivalent per average day, and 7,300,000 MMBtu equivalent per year for Equitable Resources. Texas Gas would receive gas for Equitable Resources' account at various existing receipt points on Texas Gas' system in Arkansas, Illinois, Indiana, Kentucky, Louisiana, offshore Louisiana, Ohio, Tennessee, Texas, and offshore Texas, and would deliver equivalent volumes at three existing interconnections on its

system in Warren County, Ohio. Texas Gas commenced its transportation service for Equitable Resources on November 30, 1989, under the automatic authorization provisions of § 284.223(a) of the Regulations, as reported in Docket No. ST90–928.

Comment date: February 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

11. El Paso Natural Gas Company

[Docket No. CP90–462–000]

Take notice that on January 2, 1990, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP90–462–000 a request pursuant to § § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas for TransAm Energy Inc. (Shipper), under its blanket certificate issued in Docket No. CP88–433–00 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

El Paso states that it proposes to transport up to 25,750 MMBtu of natural gas per day for Shipper from any point of receipt on El Paso's system to delivery points in New Mexico and Texas.

El Paso also states that the estimated daily and annual quantities would be 5,150 MMBtu and 1,879,750 MMBtu, respectively.

El Paso further states it commenced this service on November 24, 1989, as reported in Docket No. ST90–1026–000.

Comment date: February 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

12. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP90–479–000]

Take notice that on January 4, 1990, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP90–479–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Texaco Gas Marketing, Inc. (Texaco), a marketer, under the blanket certificate issued in Docket No. CP86–435–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated November 6, 1989, under its Rate Schedule IT–1, it proposes to transport up to 80,000 MMBtu per day equivalent of natural gas for Texaco. Northern states that it would transport the gas from multiple receipt points as shown in Appendix "A" of the transportation agreement and would deliver the gas to delivery points also shown in Appendix "A" of the agreement.

Northern advises that service under § 284.223(a) commenced November 6, 1989, as reported in Docket No. ST90–731 (filed November 29, 1989). Northern further advises that it would transport 60,000 MMBtu on an average day and 29,200,000 MMBtu annually.

Comment date: February 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

13. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP90–480–000]

Take notice that on January 4, 1990, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston Texas 77251–1188, filed in Docket No. CP90–480–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Ag Processing, Inc. (Ag Processing), an end-user, under the blanket certificate issued in Docket No. CP86–435–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated November 6, 1989, under its Rate Schedule IT–1, it proposes to transport up to 10,000 MMBtu per day equivalent of natural gas for Ag Processing. Northern states that it would transport the gas from multiple receipt points as shown in Appendix "A" of the transportation agreement and would deliver the gas to delivery points also shown in Appendix "A" of the agreement. Northern also states that the proposed service may involve the compression of gas at its Fort Buford Compressor Station for delivery to Northern Border Pipeline Company for the account of Ag Processing.

Nothern advises that service under § 284.223(a) commenced November 6, 1989, as reported in Docket No. ST90–732 (filed November 29, 1989). Nothern further advises that it would transport 7,500 MMBtu on an average day and 3,650,000 MMBtu annually.

Comment date: February 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

14. Great Lakes Gas Transmission Company

[Docket No. CP88–539–003]

Take notice that on December 29, 1989, Great Lakes Gas Transmission Corporation (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP88–539–003 a petition pursuant to section 7 of the Natural Gas Act, to amend an order issued on March 22, 1989, to continue the firm transportation of natural gas for Consumers Power Company (Consumers), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that pursuant to a Commission order issued on March 22, 1989, Great Lakes is currently authorized to transport on a firm basis up to 59,000 Mcf per day for Consumers and 25,000 Mcf per day for Poco Petroleums, Ltd. (Poco). Great Lakes states that the subject volumes are received by Great Lakes at a point on the international border near Emerson, Manitoba where the facilities of Great Lakes interconnect with those of TransCanada PipeLines Limited. It is then stated that the volumes would be redelivered to ANR Pipeline Company for the accounts of Consumers and Poco at a point of interconnection between the facilities of Great Lakes and ANR located at Fortune Lake, Michigan. Great Lakes indicates that all of the gas currently transported under the certificate is used for Consumers' system supply. It is stated that the current authorization would terminate on the earlier of March 22, 1990, or the date Great Lakes accepts a blanket certificate pursuant to § 284.221 of the Commission's Regulations.

Great Lakes requests that the authorized transportation term be extended to expire on April 10, 2004, the termination date of the transportation agreements. Great Lakes also requests authority to implement a total assignment of Poco's 25,000 Mcf per day of transportation volumes to Consumers.

No other changes are proposed.

Comment date: January 29, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy

Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-901 Filed 1-12-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed During the Week of October 27 Through November 3, 1989

During the Week of October 27 through November 3, 1989, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: January 9, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Oct. 27 through Nov. 3, 1989]

Date	Name and location of applicant	Case No.	Type of submission
Oct. 31, 1989	Robert E. Caddell, North Augusta, SC	LFA-0005	Appeal of an information request denial. If Granted: The October 20, 1989 Freedom of Information Request Denial issued by the DOE Inspector General, John C. Layton, would be rescinded, and Robert E. Caddell would receive access to information pertaining to allegations made against him.
Nov. 3, 1989	Apex Oil Company, Washington, DC	LEF-0003	Implementation of special refund procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, Subpart V, regarding funds remitted to the DOE by Apex Oil Company.
Nov. 3, 1989	Reports Committee for Freedom of the Press	LFA-0006	Appeal of an information request denial. If Granted: The October 13, 1989 Freedom of Information Request Denial issued by the DOE Office of Administrative Services would be rescinded, and the Reporters Committee for Freedom of the Press would receive access to certain DOE information.

REFUND APPLICATIONS RECEIVED

[Week of Oct. 27 through Nov. 3, 1989]

Date received	Name of refund proceeding/name of refund applicant	Case No.
10/23/89	Roy's Auto Speciality Inc.	RF318-6
10/26/89	Compagnie Belge D'Affretemen.	RA272-15
10/30/89	Daichi Chuo Kisen Kaisha.	RA272-16
10/30/89	Peterson Oil Company.	RF309-1376

REFUND APPLICATIONS RECEIVED—Continued

[Week of Oct. 27 through Nov. 3, 1989]

Date received	Name of refund proceeding/name of refund applicant	Case No.
10/30/89	Peterson Oil Company.	RF309-1377
10/30/89	Smith Parker	RF300-10885
10/30/89	Wingert Oil Company.	RF300-10886
10/30/89	Cherry Run Supply	RF300-10887

REFUND APPLICATIONS RECEIVED—Continued

[Week of Oct. 27 through Nov. 3, 1989]

Date received	Name of refund proceeding/name of refund applicant	Case No.
11/01/89	Fredonia Valley Quarries.	RF300-10888
11/01/89	H. C. Oil Co.	RF265-2862
11/01/89	Grabenstein Service.	RF265-2863
11/01/89	Younger Oil Company.	RF265-2864

REFUND APPLICATIONS RECEIVED—Continued

[Week of Oct. 27 through Nov. 3, 1989]

Date received	Name of refund proceeding/name of refund applicant	Case No.
11/01/89	Million Service	RF265-2865
11/01/89	Huber's 4 Corners Storend.	RF265-2866
11/01/89	H. McLain Oil Company.	RF265-2867
11/01/89	Huerter's Service	RF265-2868
11/01/89	Lakehead Service	RF309-1378
11/01/89	Boston's Gulf Service.	RF300-10889
11/01/89	Publix Super Markets, Inc.	RF300-10890
11/02/89	Jefferson Avenue Crown.	RF313-312
11/02/89	Lee Pershing Exxon.	RF307-10072
10/27/89 thru 11/03/89.	Crude Oil Refund Applications Received.	RF272-76126 thru RF272-78184
10/27/89 thru 11/03/89.	Atlantic Richfield Refund Applications Received.	RF304-10562 thru RF304-10571

REFUND APPLICATIONS RECEIVED—Continued

[Week of Oct. 27 through Nov. 3, 1989]

Date received	Name of refund proceeding/name of refund applicant	Case No.
10/27/89 thru 11/03/89.	Shell Oil Refund Applications Received.	RF315-7779 thru RF315-7895

[FR Doc. 90-971 Filed 1-12-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearing and Appeals

Cases Filed During the Week of November 17 Through November 24, 1989

During the Week of November 17 through November 24, 1989, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Enegy, Washington, DC 20585.

Dated: January 9, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of November 17 through November 24, 1989]

Date	Name and location of Applicant	Case No.	Type of submission
Nov. 20, 1989	Foster Fuels, Inc., Cullen, Virginia	LEE-0004	Exception to the reporting requirements. If Granted: Foster Fuels, Inc. would not longer be required to file form EIA-782B, the "Retailers/ Resellers' Monthly Petroleum Products Sales Report."
Nov. 21, 1989	Kenneth Walker, Abilene, Texas	LRR-0002	Motion for reconsideration. If Granted: The Office of Hearings and Appeals would reverse the July 7, 1989 Decision and Order (Case Nos. KRZ-0092 & KRZ-0093) which gave Kenneth Walker access to the records of Southwestern States Marketing Corporation's trading partners; refused to compel the ERA to match purchase and sales in the computation of the violation amount; and refused to compel the ERA to provide complete copies of the purchase and sales contracts to Southwestern.
Nov. 21, 1989	Robert Burns, Washington, DC	LFA-0007	Appeal of an information request denial. If Granted: The Freedom of Information Request Denial issued by the Office of the Inspector General would be rescinded and Robert Burns would receive access to certain DOE information.
Nov. 21, 1989	Southwestern States Marketing Corporation, Abilene, Texas.	LRR-0003	Motion for Reconsideration. If Granted: The Office of Hearings and Appeals would reconsider the July 7, 1989 Decision and Order (Case Nos. KRZ-0092 and KRZ-0093) (1) rejecting certain evidence and arguments submitted by the Trustee in Bankruptcy for the Estate of Southwestern States Marketing Corporation; and (2) finding that the Trustee waived the opportunity to assist certain defenses.
Nov. 24, 1989	McMahan Oil Company, Easton, Maryland	LEE-0006	Exception to the reporting requirements. If Granted: McMahan Oil Company would not be requried to file Form EIA-782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report."
Nov. 22, 1989	Franken Oil & Distributing, Inc., Las Vegas, New Mexico.	LEE-0005	Exception to the reporting requirements. If Granted: Franken Oil & Distributing, Inc. would not be required to file Form EIA-782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report."
Nov. 20, 1989	Exxon/Marie's Exxon, Wilkes-Barre, Pennsylvania	RR307-0002	Request for modification/rescission. If Granted: The September 8, 1989 Decision and Order issued to Marie's Exxon would be rescinded, regarding the firm's application for refund in the Exxon refund proceeding.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/Name of refund application	Case No.
11/20/89	Bill's Crown	RF313-315
11/20/89	New York University.	RC272-74
11/20/89	Airport Exxon	RF307-10075
11/21/89	Shelby County Schools.	RA272-17
11/17/89 Thru 11/24/89.	Crude Oil Refund Applications Received.	RF272-78393 Thru RF272-78401
11/17/89 Thru 11/24/89.	Atlantic Richfield Refund Applications Received.	RF304-10587 Thru RF304-10747
11/17/89 Thru 11/24/89.	Shell Oil Refund Applications Received.	RF315-8251 Thru RF315-8510
11/27/89	Lankford & Shea, Inc..	RF307-10077

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of refund proceeding/Name of refund application	Case No.
1/23/89	North Interstate Exxon.	RF307-10079.

[FR Doc. 90-972 Filed 1-12-90; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed During the Week of November 24 Through December 1, 1989

During the week of November 24 through December 1, 1989, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: January 9, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Nov. 24 through Dec. 1, 1989]

Date	Name and location of applicant	Case No.	Type of submission
Nov. 27, 1989	The National Security Archive, Washington, DC	LFA-0010	Appeal of an information request denial. If Granted: The October 10, 1989 Freedom of Information Request Denial issued by the Office of Classification and Technology Policy would be rescinded, and the National Security Archive would receive access to documents relating to Pakistani heavy water facilities in Multan and Karachi.
Nov. 29, 1989	MKS Instruments, Inc., Andover, Massachusetts	LFA-0008	Appeal of an information request denial. If Granted: The October 30, 1989 Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded, and MKS Instruments, Inc. would receive access to a copy of the bid abstract for Los Alamos National Laboratory (LANL) Solicitation No. 2-K9-E0051.
Nov. 30, 1989	Harvin Oil Company, Sumpter, South Carolina	LEE-0007	Exception to the reporting requirements. If Granted: Harvin Oil Company would not be required to file Form EIA-782B. "Resellers'/Retailers' Monthly Petroleum Product Sales Report."
Dec. 1, 1989	The Digital Valve Company, Boulder, Colorado	LFA-0009	Information request denial appeal. If Granted: The November 2, 1989 Freedom of Information Request Denial issued by the Idaho Operations Office would be rescinded, and The Digital Valve Company would receive copies of design information for the Large Blast Simulator Valve provided by Eaton Consolidated Controls to EG&G Idaho, Inc.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
11/27/89	Vickers/Oklahoma	RQ-541.
11/24/89 thru 12/1/89.	Crude Oil Refund Applications Received.	RF272-78402 thru RF272-78407.
11/24/89 thru 12/1/89.	Atlantic Richfield Refund Applications Received.	RF304-10748 thru RF304-10786.
11/24/89 thru 12/1/89.	Shall Oil Refund Applications Received.	RF315-8511 thru RF315-8989.

[FR Doc. 90-973 Filed 1-12-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3704-8]

Science Advisory Board, Environmental Health Committee; Open Meeting

Under Public Law 92-463, notice is hereby given that a meeting of the Environmental Health Committee of the Science Advisory Board will be held on February 15-16, 1990 at the Fontainebleau Hilton Resort and Spa, 4441 Collins Avenue, Miami Beach, FL, 31140. This meeting will start at 8:30 a.m. on February 15 and will adjourn no later than 3:00 p.m. February 16.

The main purpose of this meeting will be to review the health criteria document for pentachlorophenol and the biomarkers research strategy.

Documentation for this meeting is available from Ms. Marie Pfaff, Office of Research and Development, RD-689, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 (for pentachlorophenol) and Dr. Jack Fowle, Health Effects Research Laboratory, Research Triangle Park, NC (for biomarkers).

Any member of the public wishing to make a presentation at the meeting should forward a written statement to Dr. C. Richard Cothern, Executive Secretary, Science Advisory Board (A-

101F), U.S. Environmental Protection Agency, Washington, DC 20460 by February 1, 1990. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total of ten minutes.

Dated: December 28, 1989.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 90-965 Filed 1-12-90; 8:45 am]

BILLING CODE 6560-50-10

[FRL-3704-7]

Science Advisory Board, Drinking Water Committee; Open Meeting

Under Public Law 92-463, notice is hereby given that a meeting of the Drinking Water Committee of the Science Advisory Board will be held on February 1-2, 1990 at the Embassy Row Hotel, 2015 Massachusetts Avenue, NW., Washington, DC 20036. This meeting will start at 8:30 a.m. on February 1 and will adjourn no later than 1:00 p.m. February 2.

The main purpose of this meeting will be to review the health criteria document for nitrates and nitrites in drinking water and other health issues involved in the Phase II regulations. The Committee will also discuss plans for future meetings.

Documentation for this meeting is available from the Office of Drinking Water, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Any member of the public wishing to make a presentation at the meeting should forward a written statement to Dr. C. Richard Cothern, Executive Secretary, Science Advisory Board (A-101F), U.S. Environmental Protection Agency, Washington, DC 20460 by January 19, 1990. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total of ten minutes.

Dated: December 28, 1989.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 90-963 Filed 1-12-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3705-1]

Science Advisory Board, Environmental Engineering Committee, Municipal Solid Waste Subcommittee; Open Meeting

Under Public Law 92-463, notice is hereby given that the Science Advisory Board Municipal Solid Waste Subcommittee of the Environmental Engineering Committee (EEC), will meet January 30-31, 1990 in North Conference Room Number 9 of the Environmental Protection Agency, Headquarters' at 401 M Street, SW., Waterside Mall, Washington, DC 20460. The meeting will begin at 9:00 a.m. on Tuesday and 8:30 a.m. on Wednesday and adjourn no later than 5:00 p.m. each day.

The purpose of the meeting is to conduct a research-in-progress review on the Agency's Municipal Solid Waste Research Program.

The Science Advisory Board meeting of January 30-31, 1990 is open to the public. Any member of the public wishing further information on the meeting or those who wish to submit written comments should contact Dr. K. Jack Kooyoomjian, Executive Secretary, or Mrs. Marie Miller, Secretary, Science Advisory Board, (A101-F), U.S. Environmental Protection Agency, Washington, DC 20460, at 202/382-2552 by January 22, 1990. Seating at the meeting will be on a first come basis.

Dated: December 22, 1989.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 90-964 Filed 1-12-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3704-9]

Science Advisory Board, Relative Risk Reduction Strategies Committee; Open Meeting

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given of a public meeting of the Health Risk Subcommittee of the Relative Risk Reduction Strategies Committee. The meeting will be held from 9 a.m. to 5 p.m. on February 1 and 2, 1990 at the Holiday Inn Crowne Plaza Hotel, 300 Army/Navy Drive, Arlington VA 22202 (703-892-4100). The Subcommittee will continue its discussions on the development of environmental health risk reduction strategies.

Background: For further information concerning this project, please refer to the notices contained in 54 FR 35386, August 25, 1989, and 54 FR 38282, September 15, 1989.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the Subcommittee or the meeting, or wishing to make a statement at the meeting, should contact Samuel Rondberg, Designated Federal Official, U.S. Environmental Protection Agency (A-101F), 401 M Street, SW., Washington, DC, (202) 382-2552, (FTS) 382-2552. Seating at the meeting is on a first come basis.

Dated: January 5, 1990.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 90-966 Filed 1-12-90; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-140123; FRL-3668-8]

Access to Confidential Business Information by Versar, Incorporated and Subcontractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized Versar, Inc., of Springfield, Virginia, and the subcontractors named in this notice for access to information which has been submitted to EPA under sections 4, 5, 6, and 8 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 29, 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 68-D9-0166, Versar, 6850 Versar Center, Springfield, VA, and its subcontractors, Syracuse Research Corporation (SRC), Merrill Lane, Syracuse, NY, General Science Corporation (GSC), 6100 Chevy Chase Drive, Suite 200, Laurel, MD, and Arthur D. Little (ADL), Acorn Park, Cambridge, MA will generate exposure assessments support for the Office of Toxic Substances for both new and existing chemicals. This support may be in the form of developing human and environmental exposure assessments; estimating pertinent physical, chemical,

biological, and fate properties for all Premanufacture notices (PMNs) submitted under section 5 of TSCA; or critically reviewing fate testing data or testing protocols. In addition, data submitted under section 8 of TSCA will be used in developing exposure estimates for chemicals being reviewed under sections 4 and 6 of TSCA.

In accordance with 40 CFR 2.306(j), EPA has determined that under contract number 68–D9–0166, Versar and its subcontractors will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA to perform successfully the duties specified under the contract. 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, and 8 of TSCA that EPA may provide Versar and its subcontractors 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 Versar's facilities. Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1992.

EPA has approved Versar's security plan and has found the facilities to be in compliance with the manual.

Versar and subcontractor 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: January 5, 1990.

Linda A. Travers,

Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 90–886 Filed 1–12–90; 8:45 am]

BILLING CODE 6560–50–D

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Family Stations, Inc, et al.

1. The Commission has before it the following mutually exclusive applications for renewal of license of Station WFSI(FM), Annapolis, Maryland, and for a New FM Station at Annapolis, Maryland:

Applicant and city and state	File No.	MM Docket No.
A. Family Stations, Inc., Annapolis, MD.	BRH–880531YB	89–609
B. FM Annapolis, Inc., Annapolis, MD.	BPH–880901MA	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated preceeding upon the issues whose headings are set forth below. The text of each issue has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name above is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Comparative A, B
2. Ultimate, A, B

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 90–954 Filed 1–12–90; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; City of Los Angeles

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and 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 protests or 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 and protests are found in §§ 560.7 and/or 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.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–011088–003

Title: City of Los Angeles Terminal Agreement.

Parties: City of Los Angeles, Matson Terminals, Inc.

Filing Party: James K. Hahn, City Attorney, Harbor Division, 425 S. Palos Verdes Street, San Pedro, CA 90733–0151.

Synopsis: The Agreement modifies the basic lease agreement to reduce Matson's leased premises from 93.2 acres to 85.8 acres and lowers the compensation on a pro-rata basis.

By the Federal Maritime Commission.

Dated: January 9, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–887 Filed 1–12–90; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed; City of Los Angeles, et al

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 224–200226–001

Title: City of Los Angeles Terminal Agreement.

Parties: City of Los Angeles, Metropolitan Stevedore Company.

Synopsis: The Agreement modifies that basic preferential berthing assignment (224–200226) for the use of premises at and adjacement to Berths 142–145 in Los Angeles Harbor to provide for a temporary reduction in the assigned premises. The Agreement also provides that during the period the premises is reduced, the monthly minimum guarantee and revenue sharing

breakpoint shall each be reduced by $1,000 per calendar day.

Agreement No: 224–010930–002

Title: City of Los Angeles Terminal Agreement.
Parties: City of Los Angeles, Stevedoring Services of America (SSA).
Synopsis: The Agreement amends the basic crane assignment agreement to extend the continued use of three cranes by SSA through March 31, 1990.

Agreement No: 224–010825A–003

Title: City of Los Angeles Terminal Agreement.
Parties: City of Los Angeles, Evergreen Marine Corporation.
Synopsis: The Agreement amends the non-exclusive crane assignment (Agreement No. 224–010825A–002) to substitute the use of one crane for another that is being retrofitted.

Agreement No: 224–200100–001

Title: City of Los Angeles Terminal Agreement.
Parties: City of Los Angeles, Distribution and Auto Service, Inc.
Synopsis: The Agreement adds section 4(g) to the basic agreement to provide that no option to readjust its term or other modification of the agreement shall become effective unless filed with the Commission and effective pursuant to the Shipping Act of 1984.

By Order of the Federal Maritime Commission.

Dated: January 9, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–888 Filed 1–12–90; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms under Review

January 9, 1990.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822)

OMB Desk Officer—Garry Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7340)

Final approval under OMB delegated authority of the discontinuance of the following report:

1. *Report title:* Daily Report of When-Issued Commitments Outstanding.
Agency form number: FR 2080.
OMB Docket number: 7100–0184.
Frequency: Daily.
Reporters: Primary dealers in U.S. government securities.
Annual reporting hours: 4,320.
Estimated average hours per response: 0.3.
Number of respondents: 40.
Small businesses are not affected.
General description of report: This information collection is authorized by law (12 U.S.C. 248(a)(2) and 353–359(a)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

This report collected information on significant "when-issued" commitments of the primary dealers that dealt in U.S. government securities with the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, January 9, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc 90–923 Filed 1–12–90; 8:45 am]

BILLING CODE 6210–01–M

First State Bancorp of Monticello, Inc.; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has 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 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 February 5, 1990.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First State Bancorp of Monticello, Inc. Employee Stock Ownership Plan and Trust, Monticello, Illinois; to acquire an additional 9.30 percent (for a total of 18.19 percent) of the voting shares of First State Bancorp of Monticello, Inc., Monticello, Illinois, and thereby indirectly acquire First State Bank of Monticello, Monticello, Illinois, State Bank of Hammond, Hammond, Illinois, and Prairie State Bank of Bloomington, Bloomington, Illinois.

Board of Governors of the Federal Reserve System, January 9, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–924 Filed 1–12–90; 8:45 am]

BILLING CODE 6210–01–M

Lonoke Bancshares, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, 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 15, 1990.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Lonoke Bancshares, Inc.,* Lonoke, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank, Lonoke, Arkansas.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. First Fabens Bancorporation, Inc., Fabens, Texas; to acquire 100 percent of the voting shares of Bancshares of Ysleta, Inc., El Paso, Texas, and Bank of Ysleta, El Paso, Texas.

Board of Governors of the Federal Reserve System, January 9, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-925 Filed 1-12-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90N-0007]

Drug Export; Crystalline Warfarin Sodium 1 MG Tablets

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that E.I. DuPont de Nemours & Co. has filed an application requesting approval for the export of the human drug crystalline warfarin sodium 1 mg tablets to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Patricia M. Beers Block, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fisher Lane, Rockville, MD 20857, 301-295-8073

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. to meet this requirement, the agency is providing notice that E.I. DuPont de Nemours & Co., Barley Mill Plaza, Wilmington, DE 19898 has filed an application requesting approval for the export of the drug crystalline warfarin sodium 1 mg tablets, to Canada. This drug is to be used as an anticoagulant. The application was received and filed in the Center for Drug Evaluation and Research on January 2, 1990, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by January 26, 1990, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: January 8, 1990.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 90-884 Filed 1-12-90; 8:45 am]

BILLING CODE 4160-01-M

Vaccines and Related Biological Products Advisory Committee Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice; amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending a previously announced public advisory committee meeting notice of the Vaccines and Related Biological Products Advisory Committee to be held on January 25 and 26, 1990. The announcement of the Vaccines and Related Biological Products Advisory Committee meeting, which was published in the **Federal Register** of January 3, 1990 (55 FR 175 at 176), is revised to read as follows:

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. January 25, 1990, 8:30 a.m., and January 26, 1990, 8:15 a.m., Bldg. 31, Conference Rm. 6, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, January 25, 1990, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; closed committee deliberations, 9:30 a.m. to 10:45 a.m.; open committee discussion, 10:45 a.m. to 12:15 p.m.; open committee discussion 1:15 p.m. to 4:15 p.m.; closed committee deliberations, 4:15 p.m. to 5:15 p.m.; open committee discussion, January 26, 1990, 8:15 a.m. to 10 a.m.; closed committee deliberations, 10 a.m. to 11 a.m.; open committee discussion, 11 a.m. to 3:30 p.m.; Jack Gertzog, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. 301-443-5455.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the diagnosis, prevention, or treatment of human diseases. The committee also reviews and evaluates the quality and relevance of FDA's research program which provides scientific support for the regulation of these products.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact persons before January 11, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On January 25, 1990, 10:45 a.m. to 12:15 p.m., the committee will discuss clinical data from varicella vaccine studies; 1:15 p.m. to 4:15 p.m., the committee will discuss efficacy data for *Haemophilus influenzae* Type b Conjugate Vaccine made by Connaught Laboratories, Inc. On January 26, 1990, 8:15 a.m. to 10 a.m., the committee will review the intramural research program: "Laboratory of Bacterial Toxins and the Laboratory of Cellular Physiology," Center for Biologics Evaluation and Research (CBER); 11 a.m. to 3:30 p.m., the committee will discuss influenza

vaccine formulation for the 1990–1991 flu season.

Closed committee deliveration. January 25, 1990, the committee will review trade secret or confidential commercial information relevant to pending product license applications in CBER. These portions of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)). On January 26, 10 a.m. to 11 a.m., the committee will review part of the intramural research program in CBER. This session of the meeting will be closed to prevent disclosure of personal information concerning individuals associated with this research program disclosure of which would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Dated: January 8, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90–885 Filed 1–12–90; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Oncologic Drugs Advisory Committee

Date, time, and place. February 1, 1990, 8:30 a.m., and February 2, 1990, 8 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, February 1, 1990, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; open committee discussion, February 2, 1990, 8 a.m. to 4 p.m.; David F. Hersey, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, Md 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in treatment of cancer.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 18, 1990, and submit a brief statement to the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On February 1, 1990, the committee will discuss: (1) requirements for the approval of drugs to treat non-small cell lung cancer; and (2) new drug application (NDA) 200–035 Ergamisole® (lefamisole), Janssen Research Foundation, for use in combination with 5-fluorouracil for adjuvant therapy of DUKES C colon cancer. On February 2, 1990, the committee will discuss:

NDA 50661 Idamycin® (idarubicin), Adria Laboratories, for use in the treatment of acute nonlymphocytic leukemia; and (2) supplemental NDA 17970 S20 Nolvadex® (tamoxifen citrate), ICN Pharmaceuticals, Inc., for use in the treatment of node negative breast cancer.

Fertility and Maternal Health Drugs Advisory Committee

Date, time, and place. February 1 and 2, 1990, 9 a.m., Conference Rms. G and H, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, February 1, 1990, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open public hearing, February 2, 1990, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 4 p.m.; Philip A. Corfman, Center for Drug Evaluation and Research (HFD–510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3510.

General function of the committee. The commitee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the control of fertility and women's health.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 22, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On February 1, 1990, the committee will discuss the relationships between hormone replacement therapy in menopausal women and breast and endometrial cancer. On February 2, 1990, the committee will discuss the new drug application for the use of hexoprenaline sulfate to suppress labor.

Microbiology Devices Panel

Date, time, and place. February 8, 1990, 1 p.m., Conference Rm. B, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. This meeting will take place in the form of a telephone conference call. A speaker phone will be provided in the conference room to allow public participation in the open session of the meeting. Open public hearing, 1 p.m. to 2 p.m., unless public participation does not last that long; open committee discussion, 2 p.m. to 4 p.m.; Joseph L. Hackett, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1096.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before February 8, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications for Hepatitis A IGM Antibody Test and Hepatitis A Total Antibody Test.

Hematology and Pathology Devices Panel

Date, time, and place. February 21, 1990, 9 a.m., Rm. 503A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.:

open committee discussion, 10 a.m. to 5 p.m.; Joseph L. Hackett, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1096.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 22, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application for an immunoperoxidase device for squamous cell carcinoma detection.

Arthritis Advisory Committee

Date, time, and place. February 22, 1990, 9 a.m., and February 23, 1990, 8:30 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, February 22, 1990, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open committee discussion, February 23, 1990, 8:30 a.m. to 4 p.m.; David F. Hersey, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in arthritis, other related diseases, and relief of pain.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before February 8, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the question of what should be the considerations for deciding which nonsteroidal antiinflammatory drugs should be made available for over-the-counter (OTC) use. The discussion will be generic in its focus and currently recognized risks, e.g., gastrointestinal, renal, hepatic, teratogenic, carcinogenic, etc., of available prescription and OTC analgesic drugs (e.g., aspirin, acetaminophen, and ibuprofen) will be discussed as the basis against which other drugs should be compared. As noted earlier, individuals are invited to make presentations at this meeting but should notify the contact person in advance.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. I), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: January 9, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90–935 Filed 1–12–90; 8:45 am]

BILLING CODE 9160–01–M

Health Care Financing Administration

Reconsideration of Disapproval of Colorado State Plan Amendment; Hearing

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

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on February 27, 1990 in Room 1083, Federal Office

Building, 1961 Stout Street, Denver, Colorado to reconsider our decision to disapprove Colorado State Plan Amendment (SPA) 88–17. The hearing may also address section 1904 nonconformity issues.

Closing Date: Requests to participate in the hearing as a party must be received by the Docket Clerk January 31, 1990.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 966–4471.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Colorado State plan amendment number 88–17.

Section 1116 of the Act and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The State of Colorado has submitted State plan amendment transmittal number 88–17 which proposes to replace the current payment methodology for inpatient hospital services with a prospective payment system based on the current Medicare system of diagnosis related groups. The proposed amendment also contains a new methodology concerning payments to disproportionate share hospitals as required by section 1923 of the Act.

The issue in this matter is whether Colorado SPA 88–17 violates section 1902(a)(13)(A) of the Act which requires, in part, that States make payment for inpatient hospital services through the use of rates which the State finds, and makes assurances satisfactory to the Secretary, are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and service in conformity with applicable State and Federal laws, regulations, and quality and safety standards.

The proposed amendment would replace the current reimbursement methodology with a prospective payment system based on the current Medicare system of diagnosis related groups. The methodology included the application of a "budget adjustment factor" which would reduce the average payment for each peer group of hospitals by 46 percent. The State's data indicate that, with the application of the "budget adjustment factor," no hospital in the State will be paid its incurred costs under the proposal. While the State asserts that it is not obligated to pay all facilities their costs due to significant excess capacity, even after adjustment for occupancy, fewer than half of the State's hospitals would have their costs covered. Although the State furnished an assurance statement as required by 42 CFR 447.253(b)(1) that they have found the proposed payment rates are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated providers, HCFA found that the assurance is unacceptable, and the proposed State plan amendment transmittal number 88–17 is not in accordance with the Federal statutory requirements of section 1902(a)(13)(A) of the Act. HCFA also believes that the State's assertion that no hospitals in the State are efficiently and economically operated due to excess capacity is, in our view, insufficient to meet the fundamental requirements of section 1902(a)(13)(A) of the Act. Furthermore, HCFA does not believe that an adjustment to Medicaid rates of the magnitude proposed by the State is consistent with the requirements of the statute.

Even though the disapproval letter was signed and dated within the 90-day period provided by statute and regulations, it was not postmarked until after the 90th day. While HCFA's investigation confirms that the letter was "sent" (as required by the regulation) within 90 days, we recognize that it is possible a court might hold otherwise. To avoid even the possibility that the amendment would thus remain in effect, we have also notified the State of our intent to withhold part or all of Federal financial participation in the State's medicaid program, pursuant to section 1904, if the amendment is not rescinded. The reconsideration hearing will also address the section 1904 nonconformity issue.

The notice to Colorado announcing an administrative hearing to reconsider the disapproval of its State plan amendment reads as follows:

Ms. Irene M. Ibarra,
Executive Director,
Department of Social Services,
1575 Sherman Street,
Denver, Colorado 80203–1714

Dear Ms. Ibarra: I am advising you that your request for reconsideration of the decision to disapprove Colorado State plan amendment (SPA) 88–17 was received on December 7, 1989.

Colorado SPA 88–17 proposes to replace the current payment methodology for inpatient hospital services with a prospective payment system based on the current Medicare system of diagnosis related groups. The proposed amendment also contains a new methodology concerning payments to disproportionate share hospitals as required by section 1923 of the Social Security Act (the Act).

The issue in this matter is whether Colorado SPA 88–17 violates section 1902(a)(13)(A) of the Act which requires, in part, that the payment for inpatient hospital services be made through the use of rates calculated under an approved State plan. The State is also required by this provision to make a determination and provide assurances satisfactory to the Secretary that these rates are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities.

I am scheduling a hearing on your reconsideration request to be held on February 27, 1990, at 10 a.m. in Room 1083, Federal Office Building, 1961 Stout Street, Denver, Colorado. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed in 42 CFR part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 966–4471.

The issue of whether HCFA disapproved amendment 88–17 has been raised by Colorado. HCFA believes that it has fully complied with the requirements in the statute and regulations and that the amendment was properly disapproved.

However, if it is ever decided that SPA 88–17 was deemed approved, HCFA believes that the plan does not comply with the provisions of section 1902 of the Act. Therefore, this is to notify the State that if the amendment is not rescinded, HCFA will withhold all or part of the Federal matching funds under title XIX, pursuant to section 1904 of the Act. The hearing which the State has requested concerning a reconsideration

of HCFA's disapproval of amendment 88-17 will also address the section 1904 nonconformity issues.

Sincerely,

Louis B. Hays,

Acting Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18)

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

Dated: January 5, 1990.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 90-892 Filed 1-12-90; 8:45 am]

BILLING CODE 4120-03-M

Health Resources and Services Administration

Final Funding Priorities for Grants for Geriatric Education Centers

The Health Resources and Services Administration announces the final funding priorities for Grants for Geriatric Education Centers for Fiscal Year 1990 under the authority of section 789(a) of the Public Health Service Act, as amended by Public Law 100-607 and under the authority of section 301 of the Act.

Section 789(a) of the PHS Act authorizes the award of grants to health professions schools as defined by section 701(4), program for the training of physicians assistants as defined by section 701(8), or a school of allied health as defined in section 701(10). Applicants conducting projects to be administered in other types of public and nonprofit private entities may be considered under section 301 of the PHS Act. Applicants must be located in the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, or the Federated States of Micronesia.

Grants may be awarded to support the improvement and development of collaborative arrangements involving several health professions. These arrangements, called Geriatric Education Centers (GECs) are established to facilitate training of medical, dental, optometric, pharmacy, podiatric, nursing, clinical psychology, health administration and appropriate allied health and public health faculty, students, and practitioners in the diagnosis, treatment, and prevention of diseases and other health problems of the aged.

Projects supported under these grants may address any combinations of the statutory purposes listed below:

(a) Improve the training of health professionals in geriatrics;

(b) Develop and disseminate curricula relating to the treatment of the health problems of elderly individuals;

(c) Expand and strengthen instruction in methods of such treatment;

(d) Support the training and retraining of faculty to provide such instruction;

(e) Support continuing education of health professionals and allied health professionals who provide such treatment; and

(f) Establish new affiliations with nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers in order to provide students with clinical training in geriatric medicine.

Grant supported projects may be designed to accomplish the statutory purposes in a variety of ways, emphasizing multidisciplinary, as well as discipline-specific approaches to the development of geriatric education resources. For example:

- Health professions schools within a single academic health center, or a consortium of several educational institutions, may share their educational resources and expertise through a Geriatric Education Center to extend a broad range of multidisciplinary educational services outward to other institutions, faculty, facilities and practitioners within a geographic area defined by the applicant.
- Institutions with limited geriatric education resources and traditional linkages with geographic areas with substantial geriatric education needs may seek to establish Geriatric Education Centers designed to enhance and expand the capability of collaborating professional schools to serve as a geriatric education resource for such areas.
- Projects may support the development of Geriatric Education Centers designed to focus on multidisciplinary geriatric education emphasizing high priority services and high risk groups among the elderly, minority aging, or other special concerns.

Review Criteria

The following criteria will be considered in the review of applications:

(1) The degree to which the proposed project adequately provides for the project requirements described in 42 CFR 57.3904;

(2) The adequacy of the qualifications and experience of the staff and faculty;

(3) The administrative and managerial ability of the applicant to carry out the proposal in a cost-effective manner; and

(4) The potential of the project to continue on a self-sustaining basis.

Funding Preference

In determining the order of funding of competing applications which have been recommended for approval, a funding preference will be given to approved applications for projects which will offer training involving four or more health professions, one of which must be allopathic or osteopathic medicine.

This funding preference was implemented in FY 1989 and the Administration is extending it in FY 1990.

Proposed funding priorities were published in the Federal Register of October 12, 1989 (54 FR 41876) for public comment. No comments were received during the 30 day comment period. These priorities will be retained as proposed.

Funding Priorities for Fiscal Year 1990

A funding priority will be given to:

1. Applications which identify minority faculty or scholars with substantial roles in carrying out the project and who have expertise in minority aging. (Only individuals already employed or recruited may be included.) Minority faculty or scholars with expertise in minority aging may enhance program content, serve as role models and mentors, and through their leadership roles in the Geriatric Education Center program encourage health professions faculty who are minority group members to avail themselves of the opportunity for short-term training in geriatrics.

2. Applications documenting formal linkages (such as subcontracts, clinical teaching affiliation agreements, etc.) with predominantly minority educational institutions or health facilities to accomplish specific aspects of the project protocol (e.g., involving minority faculty, students or practitioners, developing curricula or expanding teaching concerning minority elderly, providing trainees with experience in caring for minority elderly, etc.). Formal affiliations with predominantly minority educational institutions and health care facilities provide an opportunity to familiarize trainees with culturally-sensitive educational approaches, to strengthen their understanding for distinctive health care needs of minority group members, and to acquaint trainees with appropriate ways of addressing those needs.

3. Projects which currently have or plan to provide for a high degree of area-wide collaboration. Area-wide collaboration is emphasized in order to encourage efficiencies through resource sharing, notably optimal use of existing education and clinical resources.

This program is listed at 13.969 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: January 9, 1990.

John H. Kelso,

Acting Administrator.

[FR Doc. 90-932 Filed 1-12-90; 8:45 am]

BILLING CODE 4160-15-M

Advisory Council on Nurses Education; Meeting; Correction

This Notice corrects the meeting place and meeting date previously published in **Federal Register** Document 89-28029 appearing on page 49362 in the issue for Thursday, November 30, 1989, the January 24-25, 1990, meeting place of the "Advisory Council on Nurses Education" will be held in "Conference Room G". Where "August 16" is indicated, should read "January 24". All other information is correct as appears.

Dated: January 10, 1990.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 90-962 Filed 1-12-90; 8:45 am]

BILLING CODE 4160-15-m

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

[Docket No. N-89-2081; FR-2674-N-01]

Development of Policy for Dealing with Radon in Assisted Housing

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice to request public comments.

SUMMARY: Section 1091 of the Stewart B. McKinney Homeless Assistance Amendments Act (Pub. L. 100-628, approved Nov. 7, 1988) (McKinney Amendments Act) requires HUD to develop an effective policy for dealing with radon contamination in certain HUD-owned and assisted housing. This Notice is for the purpose of requesting public comments regarding the development of such a policy.

DATE: Comments are due on or before February 15, 1990.

ADDRESS: Comments should be submitted to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for examination by interested persons in the Office of the Rules Docket Clerk at the address listed above. As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 755-2575. (This is not a toll-free number.) Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk at (202) 755-7084.

FOR FURTHER INFORMATION CONTACT: Richard H. Broun, Director, Office of Environment and Energy, Room 7154, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755-7894. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 1091 of the McKinney Amendments Act requires that HUD develop and recommend to Congress by November 7, 1989 an effective Departmental policy for dealing with radon contamination in certain HUD-owned and assisted housing to ensure that occupants of the housing are not exposed to hazardous levels of radon. The policy is to include programs for education, research, testing, and mitigation of radon in the following housing program areas:

(1) Multifamily housing owned by HUD;

(2) Public housing and Indian housing assisted under the United States Housing Act of 1937;

(3) Housing received project-based assistance under section 8 of the United States Housing Act of 1937;

(4) Housing assisted under section 236 of the National Housing Act; and

(5) Housing assisted under section 221(d)(3) of the National Housing Act.

In developing the policy, HUD is required to utilize guidelines, information, or standards developed by the Environmental Protection Agency (EPA) for (1) testing residential and nonresidential structures for radon, (2) identifying elevated radon levels, (3) identifying when remedial actions should be taken, and (4) identifying geographical areas that are likely to have elevated levels of radon. HUD is directed to coordinate its efforts with EPA and other appropriate Federal agencies, and to consult with State and local governments, the housing industry, consumer groups, health organizations, appropriate professional organizations, and other appropriate experts.

The housing programs listed above include an estimated three million existing dwelling units, of which some significant portion is located on the ground floor and, therefore, more subject to radon contamination. The actual number of dwelling units in the types of housing covered by the statute changes throughout the year due to the construction practices of each program and HUD's progress in selling multifamily properties in default. Approximately 3,245 public housing agencies and 178 Indian Housing Authorities and 16,000 private owners administer the dwelling units covered by these programs.

The McKinney Amendments also requires HUD to enter a Memorandum of Understanding with EPA to assist in the assessment of radon contamination and the development of measures to avoid and reduce radon contamination. The Memorandum of Understanding was executed on July 6, 1989.

HUD is considering an Interagency Agreement with EPA to conduct research involving the testing and analysis of radon levels in multistory housing structures. The testing will determine the radon levels on each floor of multistory residential buildings to indicate how radon is distributed throughout the structure. The results of the research will be used as a preliminary indication (pending possibly more extensive research) of the scope of housing units to be considered in a proposed HUD radon policy, specifically whether the policy should be concerned with radon exposure above the first floor

The Department is specifically interested in obtaining the following:

1. Empirical studies that include radon measurements in multistory residential. Such studies should fully indicate radon testing protocols, including the type (charcoal canister, alpha track, etc.) and location of measurements, dates, time and length of the testing period, description of the building tested, including the heating, ventilating, and air conditioning system.

2. Description of mitigation performed

on multistory residential structures, including the results of the mitigation (radon reduction achieved), estimated installation and operating costs, and any particular problems that were encountered.

3. Descriptions of policies and programs that State and local governments are implementing with regard to education, research, testing, and mitigation.

4. Comments on the approach, preferred methods, responsibilities, priorities, funding, timing, and other issues germane to a proposed radon policy.

Interested parties should focus their comments on these and other relevant matters for HUD to consider in developing a radon policy for the programs listed in this Notice.

Other Matters

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this Notice do not have federalism implications and, thus, are not subject to review under the Order. The Notice is for the purpose of asking the public to submit comments for consideration in developing a Departmental policy for dealing with radon contamination; any policy developed as a result of this Notice will only affect certain housing either assisted or owned by HUD.

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that his Notice does not have potential significant impact on family formation, maintenance, and general well-being and thus, is not subject to review under the Order. The Notice invites the public to submit comments for consideration in developing a policy for dealing with radon contamination in certain HUD-owned and assisted housing. Although the policy ultimately developed may have an impact on the family, the development of the policy is in such an early stage that no analysis of the extent of such an impact can be made at this time.

Dated: December 28, 1989

Anna Kondratas,

Assistant Secretary for Community Planning and Development

[FR Doc. 90-943 Filed 1-12-90; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Geological Survey

Proposal Notice Establishing the Closing Date for Transmittal of Proposals Under the National Earthquake Hazards Reduction Program

Proposals are invited for research projects under the National Earthquake Hazards Reduction Program (NEHRP).

Authority for this program is contained in the Earthquake Hazards Reduction Act of 1977, Public Law 95-124. (42 U.S.C. 7701, *et seq.*)

The purpose of this program is to support research in earthquake hazards and earthquake prediction to provide earth-science data and information essential to mitigate earthquake losses.

Proposals may be submitted by educational institutions, private firms, private foundations, individuals, and agencies of State or local governments.

Closing Date for Transmittal of Proposals: Proposals must be received on or before March 1, 1990.

Program Information: This program supports research related to the New Madrid Seismic Zone.

Proposal Forms: The program announcement is expected to be available on or about January 22, 1990. You may obtain a copy of announcement 7642 by writting to Karen Phillips, U.S. Geological Survey, Office of Procurement and Contracts—MS 205C, 12201 Sunrise Valley Drive, Reston, VA 22092.

Organizations that received the FY 1991 announcement and organizations that requested to be retained on the mailing list will be mailed a copy of the program announcement.

Further Information: For further information contact Dr. Elaine Padovani, Deputy Chief, External Research Program, Office of Earthquakes, Volcanoes, and Engineering—MS 905, U.S. Geological Survey, 12201 Sunrise Valley Drive, Reston, VA 22092. Telephone: 703-648-6722.

(Catalog of Federal Domestic Assistance Number 15.807)

Dated: January 9, 1990

William F. Gossman, Jr.

Acting Asst. Director for Administration

[FR Doc. 90-975 Filed 1-12-90; 8:45 am]

BILLING CODE 4310-31-M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Indian and Native American (INA) Programs; Setting Grantee Performance Standards for Program Year 1990

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice; opportunity for comment.

SUMMARY: For Program Year 1990 (July 1, 1990–June 30, 1991), the Department of Labor plans to retain the existing standard-setting methodology for assessing JTPA section 401 grantee performance. Program Year (PY) 1990 will be the second year of the current designation cycle for Native American JTPA grantees; hence, using essentially the same performance standards system will provide continuity over the full two years.

Subject to further review and public comment, however, the Department is considering several refinements aimed at improving the current performance standards system for these programs. The limited revisions now under consideration are: (1) Whether the entered employment rate standards should be adjusted for Indian joblessness in addition to other local economic conditions which are currently accounted for in setting grantee standards, and (2) whether issuing an "exemplary" level of performance should be discontinued in assessing grantee performance on the three required measures. Comments are also requested on whether other appropriate positive interventions, in addition to acquiring advanced education, transferring to additional training, or returning to full-time school, need to be defined for purposes of reporting and to insure more consistency in measuring positive terminations.

DATES: *Effective Date: July 1, 1990.*

Comments: Interested persons are invited to submit comments. Comments must be received by the Department of Labor no later than February 15, 1990.

ADDRESS: Comments should be addressed to the Assistant Secretary for Employment and Training, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Karen Greene, Room N5629

FOR FURTHER INFORMATION CONTACT: Karen Greene, Telephone: 202-535-0680 (This is not a toll-free number)

SUPPLEMENTARY INFORMATION: Section 401 of the Job Training Partnership Act (JTPA) establishes federally funded employment and training programs for Indians and Native Americans (INA) to ameliorate serious unemployment and economic disadvantages among members of their communities.

JTPA section 106 requires the Secretary of Labor to formulate performance standards applicable to grantees designated to operate these section 401 programs.

JTPA section 401(h)(2) further specifies that "Recipients of funds under this section shall establish performance goals, which shall, to the extent required by the Secretary, comply with performance standards established by the Secretary pursuant to section 106".

Department of Labor (DOL) regulations at 20 CFR 632.11(d) identify performance standards as one of fourteen responsibility tests that INA grantees must meet for designation.

Background

In accordance with JTPA provisions referenced above, and in consultation with grantee representatives, the Department established three required performance measures:

- Entered Employment Rate (EER)—the percentage of total terminees placed in unsubsidized employment.
- Positive Termination Rate (PTR)—the percentage of total terminees who entered unsubsidized employment plus those achieving certain other positive outcomes including return to full-time school, transfer to another training program, completion of a major level of education, or sucessful completion of other planned participant activity.
- Cost per Positive Termination (CPT)—total program expenditures (minus administrative costs and community benefit costs) divided by total positive terminations.

A fourth performance measure available to INA grantees on an optional basis is the Community Benefit project (CB). These projects are monitored separately by the Department. The participants and costs involved in Community Benefit Projects are excluded in calculating grantee performance on the three required measures.

Until PY 1987, the standard-setting process was based solely on "past performance" Each grantee's minimum standards for the required measures were established in advance of the upcoming program year based on the grantee's actual performance in preceding program year

This practice had a number of disadvantages as it held "high" performing grantees to consistently greater performance levels from one year to the next, even though there may have been significant changes in clientele served and/or local economic conditions.

More importantly, "low" performing grantees had little incentive to improve their productivity because their standards were based on previous low performance levels.

Basic Modeling Approach

Beginning in PY 1987, performance standards for INA program grantees were set partly through the use of statistical modeling technique. This approach provides quantifiable, objective and equitable adjustments to performance standards to account for a number of factors including: grantee size (number of terminees) terminee characteristics, program activity, and local economic conditions.

Model-based performance estimates are distributed to grantees twice each program year. First, as part of the planning phase prior to the beginning of each program year, grantees are provided with performance estimates for use in establishing their performance targets for each measure. Second, as part of the assessment phase after each program year ends, final standards are calculated for each grantee based on the program data and actual performance reported during the year just completed.

Proposed Revisions for Program Year 1990

The Department expects to issue program planning instructions to grantees by March 1, 1990. Initial performance standards worksheets are included as part of these planning instructions. Thus, the Department must determine whether any changes should be adopted in establishing the PY 1990 performance standards. Therefore, the alternatives under consideration are as follows:

I. Make no changes in the existing performance management system in PY 1990 except to update the worksheets using more recent program data.

II. Introduce refinements for use in PY 1990 including one or more of the following changes.

A. Include an Indian Joblessness factor in the model for the Entered Employment Rate.

B. Adopt a clear definition covering terminations now reported as "Other Successful Completion of Activity"

C. Discontinue the "Exemplary" level as one of the categories used in rating grantee performance on the required measures.

Alternative I: Continuation of Existing Performance Management System

As previously indicated, there have been year-to-year changes in the performance standards system for INA grantees since the inception of JTPA in 1983. PY 1987–88 represented a period of transition in which standard-setting was based partly on the "past performance" method and partly on the new adjustment models. The current program year (PY 1989) is the first year in which grantee standards are based fully on the adjustment models for each measure.

Recent experience indicates that the adjustment models are proving to be an objective and flexible method for setting INA grantee performance standards at reasonable and realistic levels. Several more years of Indian Annual Status Report (IASR) data now have been accumulated so that statistical relationships between grantee outcomes, program activity patterns, and terminee characteristics can be estimated more reliably than was possible in previous years. The modeling process can also take into account differences among grantees in the local economic conditions of their assigned service areas.

The Department believes that it would be appropriate and highly desirable to continue using the current adjustment models during Program Year 1990. Using the same adjustment factors for both years in a two-year designation cycle is consistent with the Department's desire to reduce or eliminate systemwide disruptions that annual changes in the standards-setting process may create. This would also allow more time to consider the operational implications of any proposed revisions and to discuss them with the Indian and Native American Advisory Group. Thus, any changes in the standard-setting process could be deferred until the start of the next designation cycle (PY 1991–1992).

In PY 1989, a policy was adopted to set performance standards using a "rolling" base period that reflected the most recent three years' program data. For PY 1990, the Department intends to use updated information from PYs 1986–87–88 which would replace the data from PYs 1985-86-87. More recent data will have the effect of slightly raising the overall level of the Entered Employment Rate and Positive Termination Rate and lowering the overall Cost per Positive Termination for the PY 1990 standards.

Changes in performance standards provisions could be implemented during the first year of the next two-year designation cycle. This would allow more time for a careful assessment of the adequacy of the models used to set standards and would permit more informed decisions regarding modifications that appear to be appropriate and desirable.

Alternative II: Possible Changes for PY 1990 and/or Beyond

Although the Department's preference would be to retain the current PY 1989 process during PY 1990, some consideration is being given to the following proposed changes.

Adding an Indian Joblessness Factor in the Entered Employment Rate Model. Some concern has been expressed regarding the adequacy of the unemployment rate derived from the Local Area Unemployment Statistices (LAUS) which is currently used as an adjustment factor to characterize local labor market conditions. Local area unemployment rates compiled by the Bureau of Labor Statistics generally serve as the best available indicator of job availability in the local labor markets served by INA grantees.

This factor has been critized as not adequately providing a measure of unemployment among Native Americans because the local unemployment rates currently reported by BLS do not include discouraged workers which comprise a large proportion of the Indian and Native American population. It is also viewed as an inappropriate gauge of job availability for Native Americans because the data reflect geographic areas that do not correspond precisely to areas served by some grantees nor do they account for patterns of employment discrimination against Indians. Specifically, it is argued that the LAUS rates are lower than what grantees themselves believe the unemployment rates to be in their assigned service areas.

To address grantee concerns, several alternate data sources were examined for possible use. One of these was the tribal labor force estimates submitted to the Bureau of Indian Affairs (BIA) and published biennially. Estimates of unemployment compiled by the Bureau of Indian Affairs (BIA) proved to be unusable for two reasons. Data are unavailable for nearly one third of the Native American JTPA grantees. In addition, those reservations which the BIA data show to have higher unemployment rates are grantees with better placement rates. Therefore, if BIA data were used in the models, reservations with greater unemployment would be held to a higher job placement standard, (i.e., expected performance levels) would be harder to attain.

Another alternative is to use data from the 1980 Census showing joblessness rates among the Native American population. Census data can be used to develop an adjustment for Indian joblessness based on all adult Native Americans over the age of 16. This Indian joblessness factor could be added beginning in PY 1990 to supplement the unemployment rate in a local area.

The advantage of using the rate of joblessness among Indians is that it captures discouraged workers which would then be taken into account. Also, this factor may better reflect the unique labor force experiences of Indians, particularly those living on reservations, which grantees hold to be important.

Because this factor is derived from the 1980 Census, one apparent disadvantage is that the data on which it is based are outdated. In addition, this rate of joblessness includes those who are not seeking employment (i.e., the retired and students). When added to the model, Indian joblessness does not appreciably alter grantees' standards and will produce minor changes in the weights of all the other modeling factors. Looking to the future, an Indian joblessness factor could become even more useful as a local economic indicator once the 1990 Census data become available.

Developing a clear definition for terminations reported as "Other Successful Completion of Activity". This outcome has been reported on the Indian Annual Status Report (ETA 8604) since the beginning of JTPA, and is included among the positive interventions counted in the Positive Termination Rate. Originally this outcome was included to account for those participants who had successfully completed an established job training activity (i.e., classroom training, on-the-job training, etc.), but who had not been placed in unsubsidized employment before leaving the program. Experience indicates that some grantees report large percentages of terminations in this category. At the same time, a number of grantees do not report any terminees or only a very few in this grouping. This suggests there in some ambiguity and confusion among grantees as to what should be included in this outcome.

In the absence of a definition in the reporting instructions for "Other Successful Completion of Activity," grantees are split between favoring a clear-out definition for this reporting category and leaving the category loosely defined to maximize local discretion.

The Department recognizes that making a change in how this category is defined probably requires more detailed review and discussion with grantees than the short time available in the current comment period for this notice. Also, and perhaps more importantly, adopting and applying a specific definition will affect future grantee performance on the Positive Termination Rate and Cost per Positive Termination. Accordingly, this proposed change may need to be deferred for further consultation with grantees and possible implementation at the beginning of the the next designation cycle in Program Year 1991.

Grantee comments and suggestions are now being solicited to assist the Department in determining what appropriate interventions should be included in the definition of "Other Successful Completion of Activity".

Eliminate the "Exemplary" level as a category used to rate grantee performance on the required measures. The Department of Labor is considering a possible change in rating categories used to score grantee performance. This proposed change would eliminate the "Exemplary" level which is currently one of four performance levels used to rate grantee performance in section 401 programs:

- Meets or exceeds "Exemplary" level,
- Meets or exceeds "Recommended Performance Goal",
- Meets or exceeds "Minimally Acceptable Level",
- Below Minimum Standard.

There is some concern as to whether the use of the "Exemplary" rating may induce some grantees to achieve higher performance at the expense of providing participants with needed additional services or training.

The elimination of the "Exemplary" rating level would not affect the basic modeling process or structure. Deleting this rating category may preclude or reduce artificial efforts by some grantees to attain an "Exemplary" rating by avoiding situations which call for providing more intensive services to given particpants.

Since no monetary or other special incentives are presently available to recognize INA grantees achieving the "Exemplary" category, there appears to be little compelling need to retain this rating category in assessing grantee accomplishments on the required performance measures.

One possible negative implication to removing the "Exemplary" level is that such action might discourage grantees from striving for better performance levels in serving their participants. If this were to happen, it could reduce or reverse the consistent pattern of improved performance achieved by INA grantees over the last several program years.

Grantee comments are requested in response to this notice to assist the Department in determining if this "Exemplary" rating level should be

eliminated starting in PY 1990 or whether it should be retained for PY 1990 pending further consultation and review.

PY 1990 Planning Instructions

Pending receipt and review of comments in response to this notice, the Department will determine whether to proceed with one or more of the changes being considered or whether all such changes should be deferred until a later time. The Department presently plans to issue PY 1990 planning instructions on or before March 1, 1990, including the initial worksheets for grantees to use submitting their projected performance goals for PY 1990.

Signed at Washington, DC this 5th day of January 1990.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 90-931 Filed 1-12-90; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the National Council on the Arts/National Assembly of State Arts Agencies/ National Assembly of Local Arts Agencies Sub-committee to the National Council on the Arts will be held on February 1, 1990, from 2:30 p.m.-4:30 p.m. in room M07 at the Nancy Hanks Center, 1100 Pennyslvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will be policy issues.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90-983 Filed 1-12-90; 8:45 am]

BILLING CODE 7537-01-M

National Council on the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on February 2, 1990 from 9:00 a.m. to 5:45 p.m., and on February 3, 1990 from 9:00 a.m. to 6:30 p.m., in Room M-09 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on Friday, February 2, 1990 from 9:00 a.m. to 4:45 p.m., and on Saturday, February 3, 1990, from 9:00 a.m. to 11:30 a.m. The topics for discussion will include Reauthorization, FY 91 Appropriations, the Congressional Commission, Subgranting, NNN Committee Report, Program Review and Guidelines for Arts in Education Program; Music Program; Arts Administration Fellows; Opera-Musical Theater Program, update on Celebrate Creative America, Report on International Activities, and State of the Arts update.

The remaining sessions on Friday, February 2, 1990, from 4:45 p.m. to 5:45 p.m. and on Saturday, February 3, from 11:30 a.m.-6:30 p.m. are for the purpose of Council review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, this session will be closed to the public pursuant to subsections (c) (4), (6) and 9(B) of title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated; January 8, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90-984 Filed 1-12-90; 8:45 am]

BILLING CODE 7537-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

National Advisory Committee on Semiconductors

The purpose of the National Advisory Committee on Semiconductors (NACS), is to devise and promulgate a national semiconductor strategy, including research and development. The implementation of this strategy will assure the continued leadership of the United States in semiconductor technology. The Committee will meet on January 31, 1990 at Science Applications International Corporation, 1555 Wilson Blvd., 7th Floor, Rosslyn, Virginia 10:00 a.m. The proposed agenda is:

(1) Briefing of the Committee on its organization and administration.

(2) Briefing of the Committee by OSTP personnel and personnel of other agencies on proposed, ongoing, and completed studies regarding semiconductors.

(3) Discussion of Working Group Actions.

A portion of the January 31st sessions will be closed to the public.

the briefing on some of the current activities of OSTP necessarily will involve discussion of material that is formally classified in the interest of natonal defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would signficantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b.(c) (1), (2), and (9)(B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552b.(c)(6)

Because of the security in the New Executive Office Building, persons wishing to attend the open portion of the meeting should contact Hazel Houston, at (703) 528-6288, prior to 3:00 p.m. on January 30, 1990. Mrs. Houston is also available to provide specific information regarding time, place and agenda for the open season.

Dated; January 10, 1990.

Barbara J. Diering,

Special Assistant, Office of Science and Technology Policy.

[FR Doc 90-944 Filed 1-10-90; 8:45 am]

BILLING CODE 3170-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before February 15, 1990. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653-8538.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7340.

Title: Application for Funds, Exhibits and Documentation; Application for Guaranty, Exhibits and Documentation.

Form Nos.: SBA Form 25, 26, 27, 28, 33, 34, 444C, 444D, 1022, 1022A, 1065.

Frequency: On occasion.

Description of respondents: Small Business Investment Companies and Minority Small Business Investment Companies.

Annual Responses: 260.

Annual Burden Hours: 1040.

Title: Study of Contingent Labor Force in Small and Large Firms.

Form No.: SBA Temp 1674.

Frequency: On occasion.

Description of respondents: Small Business Owners.

Annual Responses: 1,600.

Annual Burden Hours: 400.

William Cline,

Chief, Administrative, Information Branch.

[FR Doc. 90-936 Filed 1-12-90; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2396, 2397, & 2398]

Rhode Island; Declaration of Disaster Loan Area

Providence County and the contiguous Counties of Kent and Bristol in the State of Rhode Island; Windham County in the State of Connecticut; and Worcester, Norfolk, and Bristol Counties in the State of Massachusetts constitute a disaster area as a result of damages from a fire which destroyed the Riverside Mills Complex located at 50 Aleppo Street in the Olneyville Section of Providence on December 18, 1989.

Applications for loans for physical damage as a result of this disaster may be filed until the close of business on March 2, 1990 and for economic injury until the close of business on October 1, 1990 at the address listed below: Disaster Area 1 Office, Small Business Administration, 15-01 Broadway, Fair Lawn, NJ 07410.

or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.250
For Economic Injury:	
Businesses and small agricultual cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 239605 and for economic injury the number is 692000 in the State of Rhode Island. For Windham County in the State of Connecticut, the number assigned for physical damage is 239705 and for economic injury the number is 692100. For Worcester, Norfolk, and Bristol Counties in Massachusetts the number assigned for physical damage is 239805 and for economic injury the number is 692200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: December 29, 1989.

Katherine M. Bulow,

Acting Administrator.

[FR Doc. 90-937 Filed 1-12-90; 8:45 am]

BILLING CODE 8025-01-M

Interest Rate

Pursuant to 13 CFR 108.503-8(b)(4), the maximum legal interest rate for a commercial loan which funds any portion of the cost of a project (see 13 CFR 108.503-4) shall be the greater of 6% over the New York prime rate or the limitation established by the constitution or laws of a given State. For a fixed rate loan, the initial rate shall be the legal rate for the term of the loan.

Charles R. Hertzberg,

Acting Associate Administrator for Finance and Investment.

[FR Doc. 90-940 Filed 1-12-90; 8:45 am]

BILLING CODE 8025-01-M

[License No. 04/04-0237]

Leader Capital Corporation; Surrender of License

Notice is hereby given that Leader Capital Corporation (Leader), 158 Madison Avenue, Memphis, Tennessee 38101 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). Leader was licensed by the Small Business Administration on June 23, 1986.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on December 21, 1989, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 5, 1990.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 90-939 Filed 1-12-90; 8:45 am]

BILLING CODE 8025-01-M

[License No. 01/01-0347]

LRF Capital LP; Issuance of a Small Business Investment Company License

On August 16, 1989, a notice was published in the **Federal Register** (54 FR 33809) stating that an application has been filed by LRF Capital LP with the

Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1989)) for a license to operate as a small business investment company.

Interested parties were given until close of business September 15, 1989 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 01/01–0347 on December 27, 1989, to LRF Capital LP to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 9, 1990.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 90–938 Filed 1–12–90; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 02/02–0537]

Rubicon Capital, L.P.; Application for License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company (SBIC) under the provisions of Section 301(c) of the Small Business Investment Act of 1958, as amended, (the Act), (15 U.S.C. 661 *et seq.*), has been filed by Rubicon Capital, L.P. (Applicant), 1100 Lake Street, Suite 301, Ramsey, New Jersey 07446, with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1989).

Management and control of the Applicant is made up of:

Name	Title	Percent of ownership
Rubicon Capital Corp., 1100 Lake Street, Suite 302, Ramsey, New Jersey 07446.	General Partner (GP) of Applicant.	1
Anthony M. Bruno, 400 Voorhis Road, Kinnelon, New Jersey 07035.	⅓ owner and Secretary of G.P., co-manager of Applicant.	.....
Alfred R. Urbano, 41 Malcolm Road, Mahwah, New Jersey 07430.	⅓ owner and Secretary of G.P., co-manager of Applicant.	.....
Joseph A. Panepinto, 106 Sherman Place, Jersey City, New Jersey 07306.	⅓ owner and a director of the G.P.	.....
Five additional directors of G.P.	.....	.....
Rubicon Partners L.P., 1100 Lake Street, Suite 302, Ramsey, New Jersey 07035.	Limited Partner	99

Rubicon Partners, L.P. is a limited partnership comprised of various investors, all of which are limited partners and Rubicon Funding Corp., the general partner. Rubicon Funding Corp. is owned one-third each by Messrs. Bruno, Urbano and Panepinto. There will be no indirect owners of ten percent or more of the Applicant's initial ownership interests.

The Applicant will begin operations with a capitalization of $1,223,500. The Applicant will be a source of equity capital and long-term loan funds for qualified small business concerns. The Applicant intends to invest in diverse industries. The Applicant intends to operate mainly in New Jersey and Delaware.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Act and the Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this notice, submit written comments on the proposed Applicant. Any such communications should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in Ramsey, New Jersey.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Dated: January 8, 1990.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 90–946 Filed 1–12–90; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Northcoast Executive Airlines, Inc.

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of commuter air carrier fitness determination—order 90–1–8, order to show cause.

SUMMARY: The Department of Transportation is proposing to find Northcoast Executive Airlines, Inc., fit, willing, and able to provide commuter air service under section 419(e)(1) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P–56, Department of Transportation, 400 Seventh Street, SW., Room 6401, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than January 24, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2340.

Dated: January 9, 1990.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc 90–896 Filed 1–12–90; 8:45 am]

BILLING CODE 4910–62–M

Office of Hearings

[Docket No. 46700]

1990 U.S.-Japan Gateways Proceeding; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled proceeding will be held before the Presiding Judge on January 30, 1990 at 10:00 a.m. (local time) in Room 100, International Trade Commission Building, 500 E Street, SW., Washington, DC.

All applicants, petitioners for intervention, and other parties are to submit to the Presiding Judge, on or before January 26, 1990, four copies of:

(1) Any proposals for changes in the Evidence Request contained in Order 90–1–4;

(2) A suggested procedural schedule;[1]

(3) Any proposed stipulations;

(4) A statement of issues, including any additional issues not specifically raised in the Order 90–1–4 and any sub-issues that parties consider relevant to the matters placed in controversy by Order 90–1–4; and

(5) A statement of position.

In view of the complex nature of this proceeding and the substantial number of parties that may be involved, the participants at the prehearing conference will also be expected to address the following items:

(a) The feasibility and/or need for restricting the number of pages of written direct testimony and written rebuttal testimony;

(b) Whether to eliminate promotional materials from the parties' exhibits;[2]

(c) The feasibility and/or need for aligning parties with common interests and for the designation of lead counsel to conduct cross-examination on behalf of such aligned parties;

(d) Whether the hearing should be phased to consider the Tokyo routes separately from the other Japan routes;[3]

(e) An estimate of the amount of hearings days needed to complete the evidentiary presentations, whether the hearing is phased or not phased;

(f) The feasibility and/or need to restrict the number of pages in the post-hearing briefs;

(g) Procedures for prehearing admission of written prefiled testimony and exhibits as to which there is no objection.[4]

(h) Any other matters that may aid the orderly and expeditious disposition of this proceeding.

Daniel M. Head,

Administrative Law Judge.

[FR Doc. 90–895 Filed 1–12–90; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Advisory Circulars; Small Airplanes Airworthiness Standard

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Publication of advisory circulars; part 23 airplanes.

SUMMARY: The purpose of this notice is to advise the public of advisory circulars (AC's) issued by the Small Airplane Directorate since January 1989. These AC's listed below, relate to part 23 of the Federal Aviation Regulations (FAR) and/or part 3 of the Civil Air Regulations (CAR). They were issued to inform the aviation public of acceptable means of showing compliance with the Airworthiness Standards in the FAR and/or CAR, but the material is neither mandatory nor regulatory in nature.

FOR FURTHER INFORMATION CONTACT: Mr. Hal Foland, Manager, Policy & Guidance Section, ACE–111, Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; commercial telephone (816) 426–6941, or FTS 867–6941.

SUPPLEMENTARY INFORMATION:

Background

These AC's were developed in response to the needs identified by industry during the FAA Airframe Policy and Program Review Public Meeting held in Wichita, Kansas on June 8–9, 1983; and to update existing policy information for Small Airplane Certification programs.

Comments

Interested parties were given the opportunity to review and comment on each AC during the development phase. At that time, notices were published in the **Federal Register** to announce the availability of, and request written comments, to each proposed AC. Each comment was reviewed and resolved. Appropriate comments were incorporated in the AC.

Distribution

The published AC's are available upon request through the U.S. Department of Transportation, Utilization and Storage Section, M–443.2, Washington, DC 20590.

ADVISORY CIRCULARS PUBLISHED

AC No.	Subject	Date signed
23–8A	Flight Test Guide for Certification of part 23 Airplanes.	2/9/89
23.562–1	Dynamic Testing of part 23 Airplane Seat/Restraint Systems and Occupant Protection.	6/22/89
23.1309–1	Equipment, Systems, and Installations in part 23 Airplanes.	9/19/89

J. Robert Ball,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–913 Filed 1–12–90; 8:45 am]

BILLING CODE 4910–13–M

Maritime Administration

[Docket S–859]

Waterman Steamship Corp.; Application To Consolidate and Revise Operating-Differential Subsidy Agreements, Contracts MA/MSB–115, MA/MSB–378, and MA/MSB–450

By application dated December 19, 1989, Waterman Steamship Corporation (Waterman) requested that its three Operating-Differential Subsidy Agreements (ODSA), Contracts MA/MSB–115, MA/MSB–378, and MA/MSB–450 be revised and consolidated.

Contract MA/MSB–115, expiring June 3, 1991, authorizes up to 40 annual subsidized sailings on Trade Routes (TR) 18 and 17 (between U.S. Atlantic and Gulf ports and ports from the Suez Canal to Indonesia, inclusive). MA/MSB–115 also authorizes privilege service on TR 13 (Egypt), limited to 18 annual sailings, and TRs 15A/15B (South and East Africa), limited to 12 annual sailings. Contract MA/MSB–378, expiring October 25, 1996, authorizes up to 12 annual subsidized sailings on TRs 12, 22, and 17 (between U.S. Atlantic and Gulf Atlantic and Gulf ports and ports in the Far East and Southeast Asia), except that under the authority of MA/MSB–115 and MA/MSB–378 Waterman may operate a combined total of 18 annual sailings on TR 17. Contract MA/MSB–450, expiring November 20, 1998, authorizes up to 35 annual subsidized sailings on TR 21 (between U.S. Gulf ports and ports in the U.K., Ireland, Northern Continental Europe, Scandinavia, and the Baltic and Barents Seas). Each of Waterman's OSDAs authorizes discrete geographical service areas, but all three contracts provide for vessel transfer or interchange between these services.

Waterman is currently providing about 14 sailings per year on TRs 18/17 under Contract MA/MSB–115 with four LASH vessels—the ROBERT E. LEE, STONEWALL JACKSON, SAM HOUSTON, and GREEN VALLEY. Waterman advises that service under Contracts MA/MSB–378 and MA/MSB–450 has been suspended due to lack of sufficient ships in Waterman's fleet and the U.S. Government's decision not to renew the maritime trade agreement with the Soviet Union. Waterman points out, however, that as recently as

[1] To expedite this cause, the applicants and other potential parties should immediately begin preparation of their direct testimony and exhibits.

[2] See footnote 12 on page 9 of Order 90–1–4.

[3] See footnote 4 on page 4 of Order 90–1–4.

[4] This would not, however, restrict the right of parties to cross-examine on such testimony and exhibits.

January 31, 1989, the Maritime Administration reaffirmed that those contracts "remain valid and are commitments of the United States." (Final Opinion and Order, Docket No. S–838, pp. 16 and 34.)

Specifically, Waterman is proposing that its three existing OSDAs be revised and consolidated so as to:

(1) Set a uniform expiration date of December 31, 1996, for all ODS payments to Waterman.

(2) Eliminate contract authority to serve TR 12 or TR 22.

(3) Reduce TR 21 contract authority from a maximum of 35 annual sailings to a maximum of only 9 annual sailings (utilizing no more than one vessel).

(4) Reduce TR 18 contract authority from a maximum of 40 annual sailings to a maximum of 25 annual sailings (utilizing no more than six vessels).

(5) Maintain the present TR 17 authority at a maximum of 16 annual sailings, and the present privilege call authority on TRs 13 (Egypt), 15A and 15B.

Waterman states that it intends to deploy four vessels on TRs 18/17 through March 31, 1990, and five vessels through December 31, 1990, and six vessels through December 31, 1996. Waterman also proposes to deploy one vessel on TR 21 from January 1, 1991, through December 31, 1996. Waterman states that it does not propose any new service, but essentially continuation of its present service through December 31, 1996, but with a reduction of the maximum number of authorized sailings on TR 18 from 40 down to 25, and a reduction on TR 21 from 35 sailings down to nine, utilizing the vessel types already authorized in Contracts MA/MSB–115 and MA/MSB–450.

According to Waterman, approval of this proposal by the Maritime Administrator and the Maritime Subsidy Board would result in at least five significant benefits to the U.S. Government, the overall U.S. merchant marine, and Waterman.

First, the total subsidy payment obligation of the Government relating to Waterman's ODS contracts would be reduced by $62.24 million, a 25-percent reduction in total contractual obligations. Second, the Government's Title XI interest in Waterman's LASH vessels and barges, which will still total $24 million in June 1991, would be protected since these vessels will continue to be used productively by Waterman on TRs 18/17.

Third, the competitive status quo on the routes served by Waterman would be essentially preserved, assuring little or no impact on other U.S.-flag carriers. Fourth, Waterman's important U.S.-flag service to shippers on TRs 18/17 would be maintained and strengthened by Waterman's continued investment in this service, including the refurbishing of its fleet of barges. And fifth, by upgrading its fleet Waterman would bring about critically-needed improvement in the U.S. merchant marine, so vital for U.S. foreign commerce and national defense.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Comments must be received no later than 5:00 p.m. on January 30, 1990. The Maritime Subsidy Board will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies)).

By order of the Maritime Subsidy Board.

Dated: January 10, 1990.

James E. Saari,

Secretary.

[FR Doc. 90–945 Filed 1–12–90; 8:45 am]

BILLING CODE 4910–81–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: January 8, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220

Financial Management Service

OMB Number: 1510–0024.
Form Number: TFS 1503.
Type of Review: Extension.
Title: Return Notice of Claim Against the United States for the Proceeds of a Government Check.
Description: This form is used to transmit incomplete executed claim forms back to the payee that has requested payment for his/her lost, stolen, or mutilated United States government check.
Respondents: Individuals or households.
Estimated Number of Respondents: 8,500.
Estimated Burden Hours Per Response: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 425 hours.

OMB Number: 1510–0033.
Form Number: POD 1672.
Type of Review: Extension.
Title: Application of Undertaker for Payment of Funeral Expenses From Funds to the Credit of a Deceased Depositor.
Description: This form is used by the undertaker to apply for payment of the Postal Savings Account of a deceased depositor to apply to the funeral expenses. This form is supported by a certificate from a relative (POD 1690) and an itemized funeral bill. Payment is made to the funeral home instead of the deceased depositor's heir.
Respondents: Individuals or households.
Estimated Number of Respondents: 25.
Estimated Burden Hours Per Response: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 13 hours.

OMB Number: 1510–0037.
Form Number: TFS 5135.
Type of Review: Extension.
Title: Voucher for Payment of Awards.
Description: Awards certified to Treasury are paid annually as funds are received from Foreign Governments. Vouchers are mailed to awardholders showing payments due. Awardholders sign voucher certifying that he is entitled to payment. Executed vouchers are used as a basis for payment.
Respondents: Individuals or households, Small businesses or organizations.
Estimated Number of Respondents: 1,400
Estimated Burden Hours Per Response: 30 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 700 hours.

OMB Number: 1510–0042
Form Number: SF 1055
Type of Review: Extension.
Title: Claims Against the U.S. for Amounts Due in Case of a Deceased Creditor.

Description: This form is required to determine who is entitled to the funds of a deceased Postal Savings Depositor or deceased awardholder. The form properly completed with supporting documents enables this office to decide who is legally entitled to payment.

Respondents: Individuals or households.

Estimated Number of Respondents: 400.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: As needed.

Estimated Total Reporting Burden: 400 hours.

Clearance Officer: Jacqueline R. Perry, (301) 436–6453, Financial Management Service, Room 500A, 3700 East West Highway, Hyattsville, MD 20782.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 90–898 Filed 1–12–90; 8:45 am]

BILLING CODE 4810–35–M

Public Information Collection Requirements Submitted to OMB for Review

Date: January 8, 1990.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–1094.

Form Number: None.

Type of Review: Reinstatement.

Title: Treatment of Certain Losses Attributable to Periods After October 31 of a Taxable Year of a Regulated Investment Company.

Description: This regulation provides rules relating to certain losses attributable to periods after October 31 of a taxable year of a regulated investment company for purposes of determining taxable income, earnings and profits, and the amount which may be designated as capital gain dividends for a taxable year. The regulation also permits a regulated investment company to make an election to defer certain losses to the following taxable year for purposes of computing its taxable income.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 275.

Estimated Burden Hours Per Response: 15 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 69 hours.

Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 90–899 Filed 1–12–90; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 10
Tuesday, January 16, 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).

CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 55, page 693, January 8, 1990.

PREVIOUSLY ANNOUNCED DATE OF MEETING: January 10, 1990.

CHANGES: The meeting was cancelled.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 301–492–6800.

Dated: January 10, 1990.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 90–1062 Filed 1–11–90; 1:36 pm]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Thursday, January 18, 1990, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. Adult Nightwear

The staff will brief the Commission on options to address risks of burn injuries to persons 65 years of age and older associated with nightwear (robes, nightgowns, and pajamas). The American Apparel Manufacturers Association will participate in the briefing.

2. Fiscal Year 1990 Operating Plan

The staff will brief the Commission on issues related to the operating plan for fiscal year 1990.

FOR A RECORD MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave, Bethesda, Md. 20207 301–492–6800.

Dated: January 10, 1990.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 90–1063 Filed 1–11–90; 1:36 pm]

BILLING CODE 6355–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:02 p.m. on Tuesday, January 9, 1990, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following matters:

Application of Arab Bank Limited, Amman, Jordan, for Federal deposit insurance of deposits received at and recorded for the accounts of its federal branch located at 520 Madison Avenue, New York City (Manhattan), New York.

Administrative enforcement proceedings.

Recommendation regarding the Corporation's assistance agreement with an insured bank.

Recommendation regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,478
First Texas Savings Association, Dallas, Texas

Matters relating to the possible closing of an insured bank.

Memorandum re: Request for authorization to expend funds for outside instructional services for examiner seminar sessions.

Memorandum and resolution regarding the organization of a bridge bank.

Memorandum re: Telephone service for the New York Regional Office.

Memorandum and resolution re: Delegation of authority to waive public notice requirement for applications to establish a branch under certain transactions.

Discussion regarding the Corporation's corporate and liquidation activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director M. Danny Wall (Director of the Office of Thrift Supervision) and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: January 10, 1990.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 90–1011 Filed 1–10–90; 4:40 pm]

BILLING 6714–01–M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Thursday, January 18, 1990, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

Due to extraordinary circumstances, and in accordance with 11 CFR 2.7(b), the Commission will hold a special closed meeting for the purpose of considering the selection of an Inspector General, pursuant to 11 CFR 2.4(b)(1).

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: (202) 376–3155.

Marjorie W. Emmons,

Secretary of the Federal Election Commission.

[FR Doc. 90–1076 Filed 1–11–90; 2:51 pm]

BILLNG CODE 6715–01–M

FEDERAL ENERGY REGULATORY COMMISSION

January 10, 1990

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–49), 5 U.S.C. 552B:

DATE AND TIME: January 17, 1990, 10:00 a.m.

PLACE: 825 North Capitol Street NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO CONSIDERED: Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 357–8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Note.—The agenda format has been revised to include new agenda prefixes: CAH, CAE, H, E, PR, PF and PC. All parts of the consent agenda will continue to be called and voted on as a single group. Consent items which are called separately at the request of a member of the Commission will be called at the end of that part of the regular agenda for the applicable substantive area (for example, CAH-5 would be considered after the last regular Hydro agenda item).

Consent Agenda—Hydro 908th Meeting—January 17, 1990, Regular Meeting (10:00 a.m.)

CAH-1.
Project No. 3021-023, Allegheny Hydro No. 8, L.P. and Allegheny Hydro No. 9, L.P.
CAH-2.
Project No. 3109-003, Eugene Water and Electric Board
CAH-3.
Docket No. UL89-14-002, Big Falls Project
CAH-4.
Project No. 2716-017, Virginia Electric and Power Company
CAH-5.
Project No. 10838-001, City of Fredericksburg, Virginia
CAH-6.
Project No. 6287-004, Rainsong Company
CAH-7.
Project No. 4412-008, Thornton Lake Resource Company
CAH-8.
Project No. 4435-008, Damnation Peak Power Company
CAH-9.
Project No. 9874-001, Michiana Hydro Electric Power Corporation
CAH-10.
Project No. 5074-017, Baker Power Company
CAH-11.
Project No. 3459-001, Cascade Water Power Development Corporation
Project No. 7732-000, Baker County Court
CAH-12.
Project No. 6046-002, Placer County Water Agency
Project No. 6714-002, Gold Run Hydro Associates
CAH-13.
Project No. 9160-001, Glenwood Springs Power Company
CAH-14.
Project No. 6432-001, Liberty County, Montana, *et al.*
Project No. 7022-000, Malta Irrigation District, *et al.*
Project No. 7099-000, City of Gillette, Wyoming
CAH-15.
Docket No. EL90-1-000, Enerco Corporation

Consent Agenda—Electric

CAE-1.
Docket Nos. ER90-73-00, ER89-66-000, ER89-125-000, ER89-228-000, ER89-633-000 and ER90-29-000, Canal Electric Company
CAE-2.
Docket Nos. ER80-573-006, ER84-604-012 and ER85-477-005, Southwestern Public Service Company
CAE-3.
Docket No. ER84-560-023, Union Electric Company
CAE-4.
Docket No. ER82-545-004, Texas Utilities Electric Company
Docket No. EL89-15-001, Texas Utilities Electric Company v. Central Power & Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company
CAE-5.
Docket No. EL89-24-001, Louisiana Power & Light Company
CAE-6.
Docket No. EL89-43-001, Boston Edison Company v. Town of Concord, Massachusetts
CAE-7.
Docket No. EL89-27-001, City of Watertown, New York v. Niagara Mohawk Power Corporation
CAE-8.
Docket No. EL88-39-002, Northern States Power Company (Wisconsin)
Docket No. EL89-9-002, Northern States Power Company (Minnesota)
CAE-9.
Omitted
CAE-10.
Docket No. EL89-33-001, Cajun Electric Power Cooperative, Inc. v. Gulf States Utilities Company
CAE-11.
Docket No. EL89-46-000, Safe Harbor Water Power Corporation
CAE-12.
Docket No. EL89-49-000, Public Service Company of Oklahoma
CAE-13.
Docket No. EL89-39-000, Snake River Power Association, Inc.
CAE-14.
Docket No. ER88-75-000, Northern States Power Company (Minnesota)
CAE-15.
Docket No. RM89-18-000, Deletion of Procedural Regulations for Transmission of Electricity to a Foreign Country

Consent Agenda—Gas and Oil

CAG-1.
Docket No. TQ90-2-61-000, Bayou Interstate Pipeline System
CAG-2.
Docket No. TQ90-2-21-000, Columbia Gas Transmission Corporation
CAG-3.
Docket Nos. TQ90-1-45-000, 001 and 002, Inter-City Minnesota Pipelines Ltd., Inc.
CAG-4.
Docket Nos. RP90-42-000 and 005, Northwest Alaskan Pipeline Company
CAG-5.
Docket No. RP90-64-000, Texas Gas Transmission Corporation
CAG-6.
Docket Nos. TA89-1-22-000 and RP89-204-000, CNG Transmission Corporation
CAG-7.
Docket Nos. RP89-227-001, TM90-2-28-001 and TM90-6-28-000, Panhandle Eastern Pipe Line Company
CAG-8.
Docket No. TA89-1-52-002, Western Gas Interstate Company
CAG-9.
Docket Nos. TA88-4-37-009, 010, 011, RP89-1-012, 013 and 014, Northwest Pipeline Corporation
CAG-10.
Docket No. RP89-98-000, Colorado Interstate Gas Company
CAG-11.
Docket No. RP90-62-000, Northwest Pipeline Corporation
CAG-12.
Docket No. RP90-61-000, Transcontinental Gas Pipe Line Corporation
CAG-13.
Docket No. RP89-242-001, Tennessee Gas Pipeline Company
CAG-14.
Docket No. RP89-35-006, Midwestern Gas Transmission Company
CAG-15.
Docket No. RP90-66-000, Tennessee Gas Pipe Line Company
CAG-16.
Docket No. RP89-251-001, Alabama-Tennessee Natural Gas Company
CAG-17.
Docket No. CP89-1951-000, Northern Natural Gas Company, a Division of Enron Corp.
CAG-18.
Docket No. C89-2092-000, Kentucky West Virginia Gas Company
CAG-19.
Docket No. CP89-1119-000, Texas Gas Transmission Corporation
CAG-20.
Docket No. RP89-39-000, ANR Pipeline Company
CAG-21.
Docket Nos. RP86-41-008 and RP87-14-008, Algonquin Gas Transmission Company
CAG-22.
Docket No. RP90-12-004, Colorado Interstate Gas Company
CAG-23.
Docket Nos. RP89-140-007 and RP89-195-004, Williams Natural Gas Company
CAG-24.
Docket Nos. RP88-115-009, CP89-31-001, CP88-818-001 and CP89-59-002, Texas Gas Transmission Corporation
CAG-25.
Docket Nos. RP89-119-007 and RP89-208-003, Texas Gas Transmission Corporation
CAG-26.
Docket Nos. CP88-434-004 and RP88-185-003, El Paso Natural Gas Company
CAG-27.
Docket No. FA85-34-002, Stingray Pipeline Company
CAG-28.
Docket No. RP89-70-006, Stingray Pipeline Company
CAG-29.
Docket No. TQ90-1-21-003, Columbia Gas Transmission Corporation
CAG-30.

Docket No. CP89–1721–001, Southern Natural Gas Company
CAG–31.
Docket No. RP89–253–003, Carnegie Natural Gas Company
CAG–32.
Docket Nos. ST89–3604–000, ST89–3605–000 and ST 89–3606–000, Crosstex Pipeline Company
CAG–33.
Docket Nos. SA88–13–000, *et al.*, ST80–37–003, ST82–122–002, ST82–468–002 and ST84–53001, Valero Interstate Transmission Company
CAG–34.
Docket No. CP73–184–006, Colorado Interstate Gas Company
Docket No. CI73–485–005, CIG Exploration, Inc.
CAG–35.
Docket No. CI89–465–000, Union Pacific Fuels, Inc.
CAG–36.
Docket No. CI87–290–000, El Paso Production Company
Docket No. CP87–553–000, El Paso Natural Gas Company
CAG–37.
Docket No. GP88–28–001, Rocky Mountain Natural Gas Company v. Jack J. Grynberg, individually, and as general partner for the Greater Green River Basin Drilling Program: 72–73
CAG–38.
Docket No. RM88–10–001, Revision of Definition for Natural Gas Produced from Devonian Shale
CAG–39.
Docket No. CP75–104–061, High Island Offshore System
Docket No. CP76–118–008, U–T Offshore System
CAG–40.
Docket Nos. CP88–490–005 and CP88–548–005, Panhandle Eastern Pipe Line Company
CAG–41.
Omitted
CAG–42.
Docket No. CP88–311–001, Williston Basin Interstate Pipeline Company
CAG–43.
Docket No. CP87–407–003, National Fuel Gas Supply Corporation
CAG–44.
Docket Nos. CP87–57–007, CP87–166–006, CP88–424–004, CP88–423–000, CP88–18–000 and CP87–560–000, Florida Gas Transmission Company
CAG–45.
Docket No. CI87–254–001, Salmon Resources Ltd.
Docket No. CI87–547–002, Enron Gas Marketing, Inc.
Docket No. CI88–346–001, Cabot Energy Marketing Corporation
Docket No. CI89–26–000, Trinity Pipeline, Inc.
Docket No. CI89–263–000, Gas Company of New Mexico, a Division of Public Service Company of New Mexico
Docket No. CI89–331–000, American Distribution Company
Docket No. CI87–825–004, V.H.C. Gas Systems, L.P.
Docket No. CI87–547–005, Enron Gas Marketing, Inc.
CAG–46.
Docket Nos. CP87–528–000 and CP87–529–000, Southern Natural Gas Company
Docket No. CP88–235–000, Texas Eastern Transmission Corporation
CAG–47.
Docket No. CP86–176–000, Midwestern Gas Transmission Company
CAG–48.
Docket Nos. CP87–548–000 and CP88–65–000, United Gas Pipe Line Company
CAG–49.
Docket No. CP88–828–000, Questar Pipeline Company
CAG–50.
Docket No. CP89–802–000, Williams Natural Gas Company
CAG–51.
Docket No. CP88–180–002, Texas Eastern Transmission Corporation
CAG–52.
Docket Nos. RP89–61–000 and RP89–146–000, Kentucky West Virginia Gas Company
CAG–53.
Docket No. GP87–35–000, Consolidated Gas Transmission Corporation, FERC JD No. 81–45299, *et al.*, John Baker WN 1846 Well, *et al.*
CAG–54.
Docket No. CP87–132–003, Tennessee Gas Pipeline Company
CAG–55.
Docket Nos. RP89–161–010 and 004, ANR Pipeline Company
CAG–56.
Docket No. CP89–1475–000, K N Energy

Hydro Agenda

H–1.
Omitted

Electric Agenda

E–1
Docket No. QF87–237–001, Midland Cogeneraton Venture, L.P. Order on application for recertification of qualifying facility status and request for waiver.

Gas and Oil Agenda

I. Pipeline Rate Matters

PR–1.
(A) Docket Nos. RP89–160–006 and 008, Trunkline Gas Company. Rehearing concerning CD reductions in connection with seasonal rates under the Rate Design Policy Statement.
(B) Docket No. RP89–161–006, ANR Pipeline Company. Rehearing concerning CD reductions in connection with seasonal rates and elimination of D–2 charges under the Rate Design Policy Statement.
(C) Docket No. RP89–183–001, Williams Natural Gas Company. Rehearing concerning CD reductions in connection with seasonal rates under the Rate Design Policy Statement.
(D) Docket No. RP89–248–001, Mississippi River Transmission Corporation. Rehearing concerning seasonal rates and the elimination of the D–2 component of demand charge under the Rate Design Policy Statement.
PR–2.
Docket Nos. RP87–62–000 and RP86–148–000, Pacific Gas Transmission Company Order concerning settlement on cost-of-service, minimum commodity for sales, and application of the Rate Design Policy Statement.
PR–3.
Docket No. RP89–35–000, Midwestern Gas Transmission Corporation. Order concerning rate settlement and application of the Rate Design Policy Statement.
PR–4.
Docket No. CP89–1281–001, Natural Gas Pipeline Company. Order on interim gas inventory charge settlement.

II. Producer Matters

PF–1.
Reserved

III. Pipeline Certificate Matters

PC–1.
(A) Docket Nos. CP89–2048–000 and CP89–2947–000, Kern River Gas Transmission Company Docket No. CP89–1–002, Mojave Pipeline Company. Order on (1) optional certificate application by Kern River to construct and operate a pipeline to interconnect with Mojave; (2) application by Kern River for a blanket certificate; and (3) optional certificate application by Mojave incorporating a settlement between Kern River and Mojave.
(B) Docket Nos. CP90–41–000, CP87–479–007 and CP87–480–000, Wyoming-California Pipeline Company. Order on application by WyCal for further optional certificate authority to construct an alternative pipeline to that previously certified.
PC–2.
Docket Nos. CP89–1991–000 and CP89–2001–000, Mississippi River Transmission Corporation. Order on application to increase firm sales service to Laclede Gas Company and to abandon a winter sales service.

Lois D. Cashell,

Secretary.

[FR Doc. 90–1087 Filed 1–11–90; 3:51 pm]

BILLING CODE 6717–01–M

FEDERAL MARITIME COMMISSION

TIME AND DATED: 11:00 a.m., January 18, 1990.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, DC 20573–0001.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. American Hawaii Cruises, Inc. and American Global Line, Inc.—Evidence of Financial Responsibility.
2. Dockets No. 81–5, 88–14, 88–18, 88–27 and 89–12—"Fifty Mile Container Rules" Reparations Cases—Appeal of Dismissal of Respondent Associations.
3. Docket No. 87–22—United States Lines (S.A.) Inc.—Petition for Declaratory Order Re: The Brazil Agreements—Discussion of the Record.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 90–1048 Filed 1–11–90; 12:16 pm]

BILLING CODE 6730–01–M

RESOLUTION TRUST CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that on Tuesday, January 9, 1989, at 2:24 p.m., the Board of Directors of the Resolution Trust Corporation met in closed session to consider certain matters relating to the resolution of two thrift institutions.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred by Director M. Danny Wall, (Director of the Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(8), (c)(9)(A)(ii) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii) and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: January 10, 1990.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 90–1012 Filed 1–10–90; 4:40 pm]

BILLING CODE 6714–01–M

Corrections

Federal Register
Vol. 55, No. 10
Tuesday, January 16, 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 ENERGY

Federal Energy Regulatory Commission

[Docket No. CP90-407-000, et al.]

Panhandle Eastern Pipe Line Company, et al.; Natural Gas Certificate Filings

Correction

In notice document 90-215 beginning on page 469 in the issue of Friday, January 5, 1990, make the following corrections:

1. On page 478, in the first column, under "40. ANR Pipeline Company", [Docket No. CP90-413-000] should read [Docket No. CP90-431-000].

2. On the same page, in the second column, under "42. ANR Pipe Line Company", [Docket No. CP90-442-000] should read [Docket No. CP90-422-000].

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-AWA-8]

RIN 2120-AD00

Establishment of the Phoenix Terminal Control Area and Revocation of the Phoenix Airport Radar Service Area; Arizona

Correction

In rule document 89-28880 beginning on page 50982 in the issue of Monday, December 11, 1989, make the following corrections:

On page 50987, in the third column, in the first complete paragraph, in the 7th line, "111°38'20"" should read "111°38'30"" and in the 26th line "22°21'50"" should read "33°21'50"".

BILLING CODE 1505-01-D

federal register

Tuesday
January 16, 1990

Part II

Department of Labor

Office of the Secretary

Women's Bureau; National Office Research, Demonstration and Technical Assistance Projects Funded In Fiscal Year 1989; Notice

Women's Bureau; National Office Research, Demonstration Program and Technical Assistance Plan for Fiscal Year 1990 and Notice of Conference; Notice

DEPARTMENT OF LABOR

Office of the Secretary

Women's Bureau; National Office Research, Demonstration and Technical Assistance Projects Funded in Fiscal Year 1989

AGENCY: Office of Secretary, Women's Bureau, Labor.

ACTION: Notice.

SUMMARY: The Women's Bureau, National Office (Washington, DC), provides information on research, demonstration and technical assistance projects funded in Fiscal Year 1989 (October 1, 1988 through September 30, 1989). This Notice summarizes the respective projects funded from FY 1989 funds and indicates the amount and recipient of the funds awarded. Information on the Women's Bureau, National Office, Fiscal Year 1990 (October 1, 1989 to September 30, 1990) procurement plan for research, demonstration and technical assistance projects is published in this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ms. Dora Carrington, Chief, Office of Administrative Management, U.S. Department of Labor, Office of Secretary, Women's Bureau, 200 Constitution Avenue, NW., Room S–3305, Washington, DC 20210, telephone number: (202) 523–6606.

SUPPLEMENTARY INFORMATION:

Background

The Women's Bureau was established by statute in 1920 to "* * * formulate standards and policies which shall promote the welfare of wage-earning women, improve their working conditions, increase their efficiency and advance their opportunities for profitable employment."

The Women's Bureau is an agency of the Office of the Secretary of Labor and is responsible for advising the Secretary on the development and implementation of Department of Labor policies and programs as they relate to this statutory mandate. To support the Director of the Women's Bureau in her role as advisor to the Secretary on matters affecting women's employment, earnings and working conditions, the Women's Bureau conducts a broad-based program of research, information development and dissemination, legislative analysis, demonstration projects and technical assistance.

The Women's Bureau demonstration projects and technical assistance program is operated to contribute to policy development and implementation by developing and testing new program concepts and new techniques for assisting private employers in their efforts to expand women's opportunities for employment and advancement. The Women's Bureau research program is similarly operated to develop knowledge in subject matter areas required to inform the policy development and implementation process in the Department of Labor on matters affecting women.

Research, demonstration and technical assistance projects are carried out through private-for-profit and non-profit organizations, agencies of state and local government, colleges and universities, community-based organizations, organizations representing workers, and other federal agencies.

The Women's Bureau demonstration and technical assistance program in FY 1989 was supported by projects funded to develop information resources and provide technical assistance to employers on work and family issues; establish networks for the exchange of information on women in the trades and among community development agencies on employment issues; provide technical assistance services to displaced homemaker programs; and to demonstrate ways to facilitate entrepreneurship among welfare recipients.

The Women's Bureau research program in FY 1989 was supported by studies funded to investigate the career paths of high level women executives and to better understand the adjustments that employers and publicly-supported education and training institutions are making in cities currently experiencing the labor shortages, demographic shifts and other labor market developments predicted to occur economy-wide by the year 2000.

Grant or contract awards totaling approximately $965,500 for ten (10) projects were made from FY 1989 funds. Total funds awarded include a Congressionally mandated grant of $494,000 to the Displaced Homemakers Network, Inc. A summary of the ten (10) projects funded, by focus area, amount of award and recipient of the award, follows.

Work and Family

Projects funded in FY 1989 were intended to support the continuing development of information resources in the work and family area. These information resources will be used to strengthen the Bureau's capacity to provide technical assistance to employers and unions wishing to institute family responsive policies and programs in the workplace. It is expected that much of the information produced will be available to the public through the Women's Bureau Work and Family Clearinghouse. Awards totaling $110,000 were made to conduct the following projects;

1. A demonstration project that focuses on the effectiveness of the volunteer sector in encouraging employer support for child care. In addition to direct technical assistance to employers, project activities include organizing conferences, seminars, focus groups and other projects concerned with employer work and family support.

Award: $50,000
Recipient: National Council of Jewish Women

2. A project to analyze recent National Governors Association survey data on child care. The analysis will result in a report on the status of child care in the states.

Award: $10,000
Recipient: National Governors Association

3. Development of a directory of state work and family programs and policies for their state employees, as well as state legislation and regulations affecting all workers in the state.

Award: $25,000
Recipient: National Association of Commissions for Women

4. A project to develop fifteen (15) in-depth profiles of union-initiated child care programs and an analytical paper on union policies regarding child care. Family responsive union initiatives identified through research in areas other than child care will also be presented.

Award: $25,000
Recipient: The Labor Institute, Inc.

Network Building

The Women's Bureau has traditionally supported the development of information sharing networks in key subject areas. In FY 1989, the Women's Bureau extended the scope of its networking support to include organizations concerned with increasing women's representation in the trades and women interested in working with community development agencies to increase their involvement in employment issues. Awards totaling $25,000 made to conduct the following projects:

1. An initiative to establish a National Tradeswomen Network to provide technical assistance, national representational activities, and develop

a public media campaign to promote women in the trades.

Award: $10,000

Recipient: Chicago Women in Trades

2. An initiative to establish a network of low-income women community leaders to work with community development agencies for the purpose of organizational development and exchange of technical assistance on employment and related social issues.

Award: $15,000

Recipient: National Congress of Neighborhood Women

Technical Assistance to Displaced Homemaker Programs

The Women's Bureau often works to enhance the reach and effectiveness of its technical assistance program through support to organizations with expert knowledge of the employment and training needs of a given target group and broad access to providers serving that group. This approach has been used for a number of years to meet the employment and training needs of displaced homemakers through the Displaced Homemakers Network, Inc.

The Displaced Homemakers Network, Inc. received a congressionally mandated award of $494,000 from FY 1989 funds to provide, et al., in-depth technical assistance 300 local service providers in ten (10) states. The technical assistance is intended to strengthen the capacity of these providers to assist displaced homemakers to reenter the labor force. The program includes an evaluation of the effect of the technical assistance on the providers' capacity to deliver program services.

Welfare Reform

The report, "Workforce 2000: Work and Workers for the Twenty-first Century," predicts significant labor shortages by the Year 2000 and encourages the integration into the labor force of groups who have traditionally experienced difficulty in the labor market. Welfare recipients, the majority of whom are women, are one such group. In FY 1989, the Women's Bureau provided $200,000 to the State of Pennsylvania, Department of Commerce, to demonstrate alternative approaches to facilitating entrepreneurship among low-income women residing in enterprise zones. The demonstration's entrepreneurial training programs are being conducted in the cities of Philadelphia, Scranton and Pittsburgh, Pennsylvania. These sites benefit from coordinated state efforts to use economic development to stimulate self-employment opportunities. Funds awarded in FY 1989 were the second increment of a $300,000 grant.

Knowledge Development

Research funded in FY 1989 will support knowledge development in areas of special significance to women. The research is intended to add to the Women's Bureau understanding of the determinants of women's access to and advancement in managerial and executive occupations in the private sector. In addition, the research is intended to enhance our understanding of what the labor market conditions predicted for the year 2000 imply for women's employment and earnings opportunities in the 21st century. Awards totaling $136,500 were made to conduct the following studies:

1. A study of the career mobility of women executives in a variety of industrial, service and government organizations. The study will examine women who have attained middle and upper management positions to trace their mobility patterns within and across organizational boundaries. Factors to be investigated that may explain these mobility patterns include sex role socialization, internal career paths, mentorship and networking.

Award: $50,000

Recipient: University of Kentucky, College of Business and Economics

2. Case studies in five (5) metropolitan areas that will provide information on how the public and private sectors are adjusting to labor shortages and what issues emerge as these metropolitan areas address problems associated with changing labor force demographics.

Award: $86,500

Recipient: New England Training Company

Ms. Roberta V. McKay, Chief, Office of Programs and Technical Assistance, may be contacted at (202) 523-6626 for detailed information on the demonstration and technical assistance projects summarized above. Detailed information on the study of the career paths of women executives may be obtained from Collis N. Phillips, Ph.D., Chief, Office of Policy Analysis and Information, telephone number: (202) 523-6627. For further information concerning the study of selected cities experiencing the labor market conditions predicted for the year 2000, contact Ms. Sandra Robinson, Office of the Director, telephone number: (202) 523-6606.

Announcement of Women's Bureau National Office FY 1990 Procurement Plan

Published in this issue of the Federal Register is the Women's Bureau, National Office, proposed procurement plan for Fiscal year 1990 (October 1, 1989 through September 30, 1990). The announcement provides information on the areas in which the National Office will solicit proposals during FY 1990. Plans for an annual competition for grant applications submitted to the Women's Bureau, National Office, for funding are also announced.

Signed at Washington, DC, this 8th of January, 1990.

Debra R. Bowland,

Acting Director Women's Bureau.

[FR Doc. 90-869 Filed 1-12-90; 8:45 am]

BILLING CODE 4510-23-M

DEPARTMENT OF LABOR

Women's Bureau; National Office Research, Demonstration Program and Technical Assistance Plan for Fiscal Year 1990 and Notice of Conference

AGENCY: Office of the Secretary, Women's Bureau, Labor.

ACTION: Notice and Notice of Procurement Plan Conference.

SUMMARY: The Women's Bureau, National Office (Washington, DC), announces its Fiscal Year 1990 (October 1, 1989 through September 30, 1990) procurement plan for research, demonstration and technical assistance projects.

Grant applications or proposals are not being solicited at this time. Solicitations for grant awards (SGAs) and requests for proposals (RFPs) to implement these plans will be published at a later date. A procurement plan conference will be held to summarize current plans for the Women's Bureau, National Office, solicitations and to present an expected timetable for issuance of SGAs and RFPs.

DATE: The procurement plan conference will be held on Tuesday, February 6, 1990, from 10:00 a.m. to 12:00 noon.

ADDRESS: The procurement plan conference will be held at the Department of Labor, 200 Constitution Avenue, NW., Suite C-5515, Room 1A and 1B, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Dora Carrington, Chief, Office of Administrative Management, U.S. Department of Labor, Office of the Secretary, Women's Bureau, 200 Constitution Avenue, NW., Room S-

3305, Washington, DC 20210, telephone number: (202) 523–6606. Persons planning to attend the procurement plan conference should contact Ms. Carrington and provide their name, organization, mailing address and telephone number by close of business Friday, February 2, 1990.

SUPPLEMENTARY INFORMATION:

Introduction

The Women's Bureau, National Office, announces its research, demonstration and technical assistance procurement plan for Fiscal Year 1990 (October 1989 through September 1990). Current plans are to conduct a program which offers technical assistance to current or potential dependent care providers to strengthen specialized segments of the industry e.g., sick child care, after school care, temporary (emergency) care and adult day care.

Current plans also include research on issues likely to affect women's employment and earnings in the 21st century. The research will be concerned with the following issues: The productivity effect of providing alternative types of employer-provided child care assistance; employee benefits for part-time and temporary workers and the family impacts of benefit levels for these workers; the threshold level of compensation necessary for women single parents to become economically independent; the investments in training necessary to prepare untrained women for nontraditional jobs; and the level and duration of transition support required to significantly reduce recidivism among welfare recipients.

Research is also planned that investigates the reasons for the low incidence of U.S. women business owners engaged in export trade and a study of the implications of women's current occupational distribution for their future employment given occupational projections for the Year 2000. The research may be procured through a single solicitation with multiple awards.

This Notice serves to alert interested parties to the FY 1990 procurement plan for the Women's Bureau, National Office. The notice does not solicit grant applications or proposals at this time. Solicitations for grant award (SGAs) or requests for proposals (RFPs) will be announced in the **Federal Register** and the "Commerce Business Daily," respectively, in the months ahead.

The majority of projects will result from full and open competition, although some competitions may be limited to units of general purpose State and local government. The Fiscal Year (FY) 1990 procurement plan also includes a Congressionally mandated grant to the Displaced Homemakers Network, Inc. In addition, a FY 1989 solicitation to provide a source of periodic information on current developments in family responsive policies in the workplace will be funded with FY 1990 resources to support the Women's Bureau Work and Family Clearinghouse.

These procurement plans are subject to change. One or more of the planned SGAs or RFPs may not be issued and/or others may be added. This announcement is for general information purposes to indicate the direction of the Women's Bureau, National Office, plan for research, demonstration and technical assistance initiatives.

In FY 1990, the policy and program activities of the Women's Bureau will be directed to five (5) subject areas: (1) Training; (2) affirmative action; (3) work and family; (4) safety and health; and (5) other subjects concerned with developments in the labor market and demographic changes outlined in the Department of Labor report, "Workforce 2000: Work and Workers for the Twenty-first Century." National Office procurements will occur in three (3) of these subject areas:

(1) Training
(2) Work and Family, and
(3) Other Subjects Concerned with Developments in the Labor Market

This announcement consists of three parts. Part I provides general background information concerning the Women's Bureau, National Office, research, demonstration and technical assistance procurement plan in FY 1990. Part II describes the three subject areas that are the focus of FY 1990 procurement activities and provides brief project information. Part III discusses a pre-bidders' conference and a future announcement of competitive procurement of grant applications.

Part I—Background

The Women's Bureau was established by statute in 1920 to " * * * formulate standards and policies which shall promote the welfare of wage-earning women, improve their working conditions, increase their efficiency and advance their opportunities for profitable employment."

The Women's Bureau is an agency of the Office of the Secretary of Labor and is responsible for advising the Secretary on the development and implementation of Department of Labor policies and programs as they relate to this statutory mandate. To support the Director of the Women's Bureau in her role as advisor to the Secretary on matters affecting women's employment, earnings and working conditions, the Women's Bureau conducts a broad-based program of research, information development and dissemination, legislative analysis, demonstration projects and technical assistance.

The Women's Bureau demonstrates projects and technical assistance program is operated to contribute to policy development and implementation by developing and testing new program concepts and new techniques for assisting private employers in their efforts to expand women's opportunities for employment and advancement.

The Women's Bureau research program is similarly operated to develop knowledge in subject matter areas required to inform policy development and implementation in the Department of Labor on matters affecting women.

The research, demonstration program and technical assistance projects funded by the National Office are carried out through private-for-profit and non-profit organizations, agencies of State and local government, colleges and universities, community-based organizations, organizations representing workers, and other Federal agencies.

The Women's Bureau demonstration projects and technical assistance program in FY 1990 will focus on testing strategies to strengthen certain segments of the dependent care industry through technical assistance directed to increasing the supply of certain specialized care in the provider market.

The FY 1990 research program will enrich our knowledge base with respect to issues affecting women's employment and earnings in the 21st century. The research will be focused on issues such as: the productivity effect of providing alternative types of employer-provider child care assistance; employee benefit levels and their family impacts for part-time and temporary workers; compensation issues affecting women single parents; training women for nontraditional jobs; the relationship of the length and duration of transition support to welfare recidivism; the reasons for the low incidence women business owners engaged in export trade; and a possible study of the implications of women's current occupational distribution for their economic status in the future given occupational projections through the Year 2000. The research may be procured through a single solicitation with multiple awards.

The procurement plan announced in this notice is a major vehicle for accomplishing the Women's Bureau

research, demonstration and technical assistance objectives.

Part II—Subject Areas

A. Training

Training is often key to women's access to jobs that provide wages sufficient to insure economic independence. For women attempting to use training to make the transition from welfare dependency to economic independence, the level and duration of transition support can be crucial. The Women's Bureau plans research to answer the following questions: What are the minimum regional/local hourly earnings and benefits packages necessary for women single parents to support themselves and their families? Is it possible to develop a model that can be widely used to make these estimates? What are the minimum hours and types of physical training necessary to prepare untrained women for selected, specific nontraditional jobs? What are the crucial effective lengths of assistance with transition expense grants to welfare recipients that result in significantly reduced recidivism.

B. Work and Family

High rates of labor force participation by women has made workers' ability to manage the responsibilities of work and family a major issue for private sector human resource managers. Women's labor force participation is currently 70 percent and is expected to increase to 81 percent by the Year 2000. Clearly, employers will be required to participate in finding solutions to their employees' work and family conflicts if they are to attract an adequate supply of workers and maintain competitive levels of productivity.

To assist employers in finding appropriate solutions to the increasing demand for family responsive policies in the workplace, the Women's Bureau developed a work and family clearinghouse as a resource for employers, unions and others. The Clearinghouse outlines the choices available to those wishing to implement policies and programs that make the workplace more responsive to workers' family obligations. The Clearinghouse provides information and guidance in five (5) broad option areas: direct services, information services, financial assistance, flexible policies and public-private partnerships.

The Women's Bureau may solicit a support contract to develop the background material necessary to offer a new option area through the Clearinghouse. The new option would provide information on publicly-sponsored and employer-based training programs that can assist workers to obtain the higher wage jobs needed to adequately care for their families.

The research program will likewise reflect the Women's Bureau emphasis on developing information relevant to wage and job opportunities as an aspect of family responsive policies in the workplace. Since increasing numbers of workers, particularly women, are being employed in temporary, part-time and leased-worker arrangements, research studies will be solicited to answer the following questions: (1) How are they fulfilling their security and family support needs, i.e., medical/health support retirement/pension coverage, paid leave, etc.? and (2) What are the new adjustments within the family structure to address these needs, and (3) What are the employment and productivity effects of employers providing alternative types of child care assistance?

In FY 1990, the Women's Bureau also intends to test technical assistance strategies to strengthen the dependent care provider market. Through demonstration projects, the initiative will focus on how to strengthen those segments of the provider market that may be thin, e.g., sick child care, after school (latch key) care, temporary (emergency) care and adult day care. The range of technical assistance activities may include: Providing information on State licensing standards (including liability insurance) and assistance with license application procedures; professional development and credentialing opportunities for dependent care workers; instruction in obtaining financing to develop or upgrade care facilities; and initiatives to support the development of community-based resource and referral organizations.

The demonstration will include a rigorous evaluation to determine its net impact on the provider market. Competition may be limited to units of general purpose State and local government.

C. Other Subject Areas Concerned with Developments in the Labor Market

The report, "Workforce 2000: Work and Workers for the Twenty-first Century," predicts a number of significant labor market developments by the Year 2000. Among these expected developments are demographic changes that will result in women, Blacks and immigrants providing most of the net growth in the labor force through the end of the century, changes on the demand-side of the labor market that will require higher levels of quantitative, communications and reasoning skills than in the past and the need for workers to be more flexible in an economy where skill requirements can shift rapidly. Increased emphasis will be placed on the applied aspects of education and training, whether the focus is on basic literacy skills or specific technical competencies. Shifting skill requirements are likely to increase the significance of employer-based training and, concomitantly, the influence of training provided through the workplace on women's advancement opportunities. Training is also likely to emphasize greater employee participation and responsibility in work environments that will be more autonomous and technological. In short, fundamental changes in the workplace are occurring that have important implications for women's economic status in the future.

Research studies will be solicited to address several issues specific to women and the 21st century. These issues involve such questions as: (1) How have jobs dominantly held by women been reshaped by the infusion of technology of other major economic and social shifts? How has pay been affected? How have both traditional and nontraditional jobs for women been affected? What are the market and nonmarket factors involved? (2) What occupations, formerly nontraditional for women, have "tipped" into resegregated patterns based on sex? What are the factors involved? What are the effects on pay? (3) What are the factors that explain minority women's low earning capacities and lack of upward mobility in specific occupations given similar cohorts based on education, experience, and other factors? (4) Since many new jobs are being more customized to employers, regions, and industries, what are the characteristics of these new jobs, what are the educational prerequisites, what are the characteristics of the workers? What are new or changing employer policies that may raise barriers to women's employment or facilitate their labor force participation? and (5) What are the labor force experiences of the immigrant women whose status changed under the Immigration Reform Act?

In view of the occupational projections for the year 2000, the Women's Bureau will also solicit research which examines occupational distribution of women, by race, to determine: (1) Whether younger women are making any advances in their

careers and occupations; (2) Whether younger women are being trained, educated and encouraged to enter the jobs of tomorrow, and (3) What is being done to reduce the dropout rate?

Related research will be solicited in the areas of international trade and the implications of women's current occupational distribution for their economic status in the future given occupational projections through the Year 2000.

International trade offers an opportunity for women entrepreneurs to expand their businesses while simultaneously contributing to growth of the U.S. economy and an easing of the trade deficit. Recent data show that the overwhelming majority of women business owners do not export any of their goods or services. The Women's Bureau will solicit research to determine how to assist women in their efforts to expand in this area.

All issues discussed in this notice may not become the subject of the solicitations for SGAs and RFPs to be issued in the coming months. The solicitations that are issued, however, will emphasize the need for proposals to reflect creativity and contribute new knowledge on issues of particular concern to working women.

Part III—Procurement Plan Conference; and Competition For Grant Applications

A. Procurement Conference

A procurement plan conference will be held on Tuesday, February 6, 1990, 10:00 a.m. to 12 noon at the Department of Labor, 200 Constitution Avenue, NW., Suite C–5515, Rooms 1A and 1B, Washington, DC 20210. The conference will be held for the following purposes:

(1) To summarize the Women's Bureau, National Office, FY 1990 procurement plan;

(2) To describe in general terms the Women's Bureau procurement process;

(3) To present the expected timetable for issuance of SGAs and RFPs; and

(4) To introduce the Women's Bureau, National Office, program plan to individuals and organizations which may be unfamiliar with the Women's Bureau's activities.

No additional substantive detail on the subject areas will be provided at the conference. Further, it will not be necessary to attend the conference in order to participate in any of the procurement actions. The conference should be most valuable to those who have not recently participated in research, demonstration and technical assistance programs funded by the Women's Bureau, National Office.

B. Competition For Grant Applications

In order to reduce the number of inappropriate proposals, increase the amount of relevant information available to prospective offerors and increase the probability of funding proposals that are more responsive to the Women's Bureau's priorities, the agency proposes to announce an annual review and selection process for grant applications as further described below. This process will apply only to proposals submitted to the Women's Bureau, National Office.

Beginning in FY 1990, the Women's Bureau will announce an annual competition for grant applications in support of the National Office research, demonstration and technical assistance program. The broad topic areas to be considered for FY 1990 are those announced in part II of this notice.

Specific rating criteria will be applied against each proposal and information on funding limitations will be provided. The notice announcing the initiation of this process will be published in the coming months.

Signed at Washington, DC, this 8th day of January 1990.

Debra R. Bowland,

Acting Director Women's Bureau.

[FR Doc. 90–870 Filed 1–12–90; 8:45 am]

BILLING CODE 4510–23–M

federal register

Tuesday
January 16, 1990

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Establishment of the Washington Tri-Area Terminal Control Area and Revocation of the Washington, DC, Terminal Control Area and Airport Radar Service Areas at Baltimore-Washington International Airport, MD, and Dulles International Airport, VA; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-AWA-9]

RIN 2120-AD01

Proposed Establishment of the Washington Tri-Area Terminal Control Area and Revocation of the Washington, DC, Terminal Control Area and Airport Radar Service Areas at Baltimore-Washington International Airport, MD, and Dulles International Airport, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Terminal Control Area (TCA) in the greater Baltimore/Washington, DC, area. Because the TCA would serve airports located in three different areas: Washington, DC; Maryland; and Virginia; the TCA would be established as the Washington Tri-Area TCA. The TCA would encompass four major airports: Andrews Air Force Base, Baltimore-Washington International, Dulles International, and Washington National. The TCA would consist of airspace from the surface or higher within a 20-mile radius of each airport up to and including 10,000 feet above mean sea level (MSL). This action is intended to increase the capability of the air traffic control (ATC) system to separate all aircraft in the terminal airspace around Andrews Air Force Base, Baltimore-Washington International Airport, Dulles International Airport, and Washington National Airport and to substantially increase safety while accommodating the legitimate concerns of airspace users. Establishment of this TCA would impose certain operating rules and pilot/equipment requirements, including requirements for an operable two-way radio, a 4096 transponder with automatic altitude-reporting equipment, an operable very high frequency omni-directional radio range (VOR) or tactical air navigational aid (TACAN) receiver, and restrictions on student pilot operations. Andrews Air Force Base and Washington National Airport are currently served by the Washington, DC, TCA which would be rescinded concurrent with the establishment of the Washington Tri-Area TCA. Baltimore-Washington International Airport and Dulles International Airport are currently served by Aiport Radar Service Areas (ARSA) which would be rescinded concurrent with the establishment of this TCA.

DATES: Comments must be recevied on or before March 16, 1990.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-10], Airspace Docket No. 89-AWA-9, 800 Independence Avenue, SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue. SW., Washington, DC.

An informal docket may also be examined during normal business hours of the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Jesse B. Bogan, Jr., Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; (202), 267-9253.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-AWA-9." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Indepdendence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Related Rulemaking Actions

On May 21, 1970, the FAA published FAR Amendment 91-78 (35 FR 7782) which enabled the establishment of TCA's. On October 14, 1988, the FAA published a final rule which revised the classification and pilot/equipment requirements for conducting operations in a TCA (53 FR 40318). Specifically, the rule: (a) Established a single-class TCA; (b) required the pilot-in-command of a civil aircraft operating within a TCA to hold at least a private pilot certificate, except for a student pilot who has received certain documented training; and (c) eliminated the helicopter exception from the minimum navigational equipment requirement.

The FAA published a final rule on June 21, 1988, which requires Mode C equipment when operating within 30 miles of any designated TCA primary airport from the surface up to 10,000 feet MSL, except for operations by certain aircraft types specifically excluded (53 FR 23356).

On February 3, 1987, the FAA published a final rule which established requirements pertaining to the use, installation, inspection, and testing of Air Traffic Control Radar Beacon System (ATCRBS) and Mode S transponders in U.S.-registered civil aircraft (53 FR 3380). The rule did not affect the requirement to use a transponder for operation in a TCA.

Background

The TCA program was developed to reduce the midair collision potential in the congested airspace surrounding airports with high density air traffic by providing an area in which all aircraft will be subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the

airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier, military or another GA aircraft. The basic causal factor common to these conflicts was the mix of uncontrolled aircraft operating under visual flight rules (VFR) and controlled aircraft operating under instrument flight rules (IFR). TCA's provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of TCA airspace afford the greatest protection for the greatest number of people by providing ATC with an increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

To date, the FAA has established a total of 26 TCA's. The FAA is proposing to take action to modify or implement the application of these proven control techniques to more airports to provide greater protection of air traffic in the airspace regions most commonly used by passenger-carrying aircraft.

On August 22, 1987, the Secretary of Transportation announced nine locations for which the FAA would issue Notices proposing the establishment of TCA's. The nine candidates cited qualify for TCA status by meeting the criteria published in FAA Handbook 7400.2C. "Procedures for Handling Airspace Matters." The criteria for establishing a TCA are based on factors which include the number of aircraft and people using that airspace, the traffic density, and the type or nature of operations being conducted. Accordingly, guidelines have been established to identify TCA locations based on two elements—the number of enplaned passengers and the number of aircraft operations.

Pre-NPRM Public Input

Airspace Meetings

Pre-NPRM airspace meetings were held on December 5, 8, and 12, 1988, to permit local aviation interests and airspace users an opportunity to present input on the design of the proposed Washington Tri-Area TCA. During the course of these meetings, there were presentations from Aircraft Owners and Pilots Association (AOPA), owners/managers of GA airports, flight instructors, private and student pilots, and concerned citizens. User groups which made presentations were: Armel Aviation Flying Club, Atlantic Soaring, Capital Area Association of Flight Instructors, Chesapeake Balloon Association, Experimental Aircraft Association (EAA), Frederick Airport Association, Fort Meade Flying Club, Maryland State Aviation Association, Mid-Atlantic Soaring Association, Nassau Flying Club, National Antique Airplane Association, and National Association of State Aviation Officials. It was strongly suggested by those attending the meetings that a TCA Ad Hoc Users Committee be formed to help in the design of the proposed TCA for the greater Baltimore/Washington, DC, area. The committee was formed; their input will be discussed later.

At the meetings, participants expressed the following concerns about the proposed design of the TCA: the area of the proposed TCA, with a 30-mile radius around each major airport, was too large; the upper limit of the TCA, 12,500 feet MSL, was too high; and in areas where the floor of the TCA is 1,200 feet MSL, pilots would be forced to fly in violation of § 91.79 and fly too close to antennas. Participants suggested that the proposed TCA needed various VFR corridors. They also stated that the proposed TCA and the VFR corridors should be described by using geographical landmarks. Many participants stated the size of the proposed TCA would eliminate several student practice areas thereby impeding the development and growth of GA student pilots. There was a concern expressed at each meeting that the large size of the proposed TCA would restrict aircraft accessibility to many GA airports, and this would eventually cause these airports to close. At two of the meetings, questions were asked as to the impact the proposed TCA would have on air traffic controllers and the services provided to the VFR pilot by air traffic controllers.

The TCA Ad Hoc Users Committee, sponsored by the Virginia Department of Aviation, met on January 10 and 17, 1989, and February 1, 1989. The committee consisted of members from the Air Line Pilots Association (ALPA), Air Transport Association of America (ATA), AOPA, EAA, National Air Transportation Association, National Business Aircraft Association, Maryland State Aviation Administration, Virginia Department of Aviation, GA airport owners/managers, area flying clubs, and private citizens. The committee accepted ideas and suggestions on the design of the proposed TCA from interested persons and organizations that were not members of the committee. Technical assistance was provided to the committee by FAA Procedures Specialists from Baltimore-Washington International Airport, Dulles International Airport, and Washington National Airport towers. The Ad Hoc Users Committee submitted to the FAA a design of the proposed TCA which is smaller in size, a 20-mile radius around each airport instead of a 30-mile radius, and an upper limit of 10,000 feet MSL as opposed to 12,500 feet MSL. The design of the proposed TCA submitted by the committee to the FAA was supported by all members of the committee except representatives from the ATA and ALPA. These two associations supported the idea of increasing the size of the proposed TCA as opposed to reducing the size of it.

Written Comments

Three comments were received during the pre-NPRM time frame. The comments received are summarized as follows:

1. The ALPA feels that the design of the proposed TCA must consider the performance characteristics of air carrier aircraft during three critical phases of flight: descent from 10,000 feet; final approach; and departure and climb out. Therefore, the ALPA recommends the size of the proposed TCA remains a 30-mile radius around each of the major airports and ceiling of 12,500 feet MSL. This would allow air carrier aircraft to enter the proposed TCA from the top instead of from the side. Additionally, the ALPA believes the 4,500-foot base of the proposed TCA in the area west of Dulles Airport may be too high and could adversely impact the capacity of the airport during periods of heavy traffic.

2. EAA, Washington, DC, Chapter 4, requests that aircraft without transponders be allowed access to small airports inside the proposed TCA.

3. A GA pilot states that an impending conflict exists between the proposed TCA and Restricted Areas R–4001A and R–4001B. The size of the proposed TCA, with a 30-mile radius around each airport, would force air traffic to fly too close to both restricted areas. To solve this impending conflict, the pilot suggests eliminating R–4001B and reducing the size of R–4001A. Other suggestions made by the pilot are: Placing a VOR on the beach which would allow pilot navigation to the beach, establishing VFR corridors in the proposed TCA, and providing a single communication frequency for all aircraft operating at and below 3,000 feet.

The FAA evaluated all verbal comments, written comments, and design submissions received on this proposal. The most prevalent concern was that the proposed design of the TCA, as initially presented, was too

large and the ceiling too high. To accommodate this concern, the FAA modified the original design of the proposed TCA. The proposed TCA has been reduced in size from a 30-mile radius to a 20-mile radius around each major airport, and the ceiling has been lowered from 12,500 feet MSL to 10,000 feet MSL. The users overwhelmingly expressed the need for VFR corridors in the proposed TCA. The FAA believes that uncontrolled corridors through the proposed Washington Tri-Area TCA are not feasible due to traffic flows at the various airports, the large number of aircraft operating in the TCA, and airspace sectorization. In lieu of VFR corridors through the TCA, the FAA has proposed to establish the floor of Area E at a higher altitude of 3,000 feet MSL. This will allow more airspace for uncontrolled aircraft to traverse underneath certain areas of the proposed TCA without contacting approach control facilities or control towers in the area. This also accomplishes the same objective as VFR corridors but with more airspace for uncontrolled operations.

The design of the proposed TCA as presented in this NPRM is almost identical to the Ad Hoc Users Committee's design presented to the FAA. The only differences between the two TCA designs are in the following aeas:

1. The users committee suggested a larger cutout area for Manassas Airport. They suggested "A NW/SE line 11 miles from the Armel VOR joining the Armel 190° and 210° radials extending to the 15-mile arc of the Armel VOR." The FAA elected to use a smaller cutout and change the shape of the cutout area for Manassas Municipal/Harry P. Davis Airport, "A 2-mile radius of Manassas Airport". It is believed that the shape of the cutout, an arc around the airport, would be more functional with less possibility of uncontrolled aircraft spillage into the TCA.

2. The users committee suggested a cutout area for Leesburg Municipal/Godfrey Field to allow VFR access to the field without going through the TCA. The FAA did not see the need to incorporate a cutout area for Leesburg Field. The floor of the TCA over Leesburg Field is 1,500 feet MSL, and the traffic pattern at the airport is 800 feet MSL. It is believed that aircraft would have ample room for access to and from the airport without entering the TCA; should the pilot elect to avoid flying in the TCA. Other than the above mentioned exceptions, the design of the proposed TCA in this NPRM is identical to the Ad Hoc Users Committee's design.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a TCA at Baltimore-Washington International Airport and Dulles International Airport. In 1987, the total number of enplaned passengers at Baltimore-Washington International Airport was more than 4.6 million and at Dulles International Airport more than 5.1 million. This more than qualifies each airport as a candidate for a TCA. Consequently, the FAA has determined that establishment of a TCA at Baltimore-Washington International Airport and Dulles International Airport is in the interest of flight safety and will result in a greater degree of protection for the greatest number of people during flight in the terminal areas. Baltimore-Washington International Airport and Dulles International Airport are each currently being served by the ARSA which would be rescinded concurrent with the establishment of this TCA. Also concurrent with the establishment of this TCA, the Washington, DC, TCA, which serves Andrews Air Force Base and Washington National Airport, would be rescinded. Andrews Air Force Base, Baltimore-Washington International Airport, Dulles International Airport, and Washington National Airport would be served with the establishment of the Washington Tri-Area TCA. The proposed location is depicted on the attached chart.

Section 91.90 of part 91 of the Federal Aviation Regulations (14 CFR part 91) defines TCA's and prescribes operating rules for aircraft in airspace designated as a TCA. The TCA rule provides, in part, that prior to entering the TCA, any pilot arriving at any airport within the TCA or flying through a TCA must: (1) Obtain appropriate authorization from ATC; (2) comply with applicable procedures established by ATC for pilot training operations at an airport within a TCA; (3) hold at least a private pilot certificate; and/or (4) meet the requirements of § 61.95 if the aircraft is operated by a student pilot. Any person operating an aircraft arriving at any airport within the TCA or flying through a TCA must have the aircraft equipped with: an operable VOR or TACAN receiver; an operable two-way radio capable of communications with ATC on appropriate frequencies for that TCA; and the applicable operating transponder and automatic altitude reporting equipment specified in paragraph (a) of § 91.24, except as provided in paragraph (d) of that section. Unless otherwise authorized by ATC, all large turbine-engine-powered aircraft operating to or from a primary airport must be operated above the designated floors of the TCA. The pilot of any aircraft departing from an airport located within a TCA is required to receive a clearance from ATC prior to takeoff.

All aircraft operating within a TCA are required to comply with all ATC clearances and instructions, and any FAA arrival or departure traffic pattern for the airport of intended operation. However, the rule permits ATC to authorize deviations from any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in a TCA may only be conducted under the terms of an ATC authorization.

Definitions, operating requirements, and specific airspace designations applicable to TCA's may be found in §§ 71.12 and 71.401 of part 71 (14 CFR part 71); and §§ 91.1 and 91.90 of part 91 (14 CFR part 91).

The standard configuration of a TCA consists of 3 concentric circles centered on the primary airport extending to 10, 20, and 30 miles respectively. The vertical limits of the TCA are 12,500 feet above MSL, with the floor established at the surface in the inner area and at levels appropriate to containment of operations in the outer areas. Variations of these criteria may be authorized contingent upon terrain, adjacent regulatory airspace, and factors unique to the terminal area. The airspace configuration contained herein is the result of an extensive staff study conducted by the local FAA authorities after obtaining public input from informal airspace meetings, written comments, and coordinating with the FAA regional office.

A unique feature of the airspace configuration contained herein is that the proposed TCA for the greater Baltimore/Washington, DC, area is one TCA which will encompass four primary airports instead of one primary airport. The FAA has determined the proposed alteration of airspace for the Washington Tri-Area TCA is consistent with TCA objectives. The proposed configuration considers the present terminal area flight operations and terrain as follows:

1. That airspace extending upward from the surface to and including 10,000 feet MSL within a 7-mile radius of the Andrews VORTAC, the Armel VORTAC, the Baltimore VORTAC, and the Washington VOR. This airspace is

necessary to contain large turbine-powered aircraft within the confines of the TCA while operating to and from the primary airports and allow for ingress/egress to secondary airports without affecting the primary airports.

2. That airspace extending upward from 1,500 feet MSL to and including 10,000 feet MSL between a 7-mile radius and a 10-mile radius of the Andrews VORTAC and the Washington VOR and between a 7-mile radius and a 12-mile radius of the Armel VORTAC and the Baltimore VORTAC. This airspace is needed to provide sufficient room for vectoring aircraft arriving and departing the primary airports.

3. That airspace extending upward from 2,500 feet MSL to and including 10,000 feet MSL between a 10-mile radius and a 15-mile radius of the Andrews VORTAC and the Washington VOR and between a 12-mile radius and a 15-mile radius of the Armel VORTAC and the Baltimore VORTAC. This airspace configuration will provide an area to contain aircraft during climb and descent profiles to transition between the terminal and en route structures.

4. That airspace extending upward from 3,500 feet MSL to and including 10,000 feet MSL between a 15-mile radius and a 20-mile radius of the Andrews VORTAC, the Baltimore VORTAC, and the Washington VOR. This airspace is needed to provide an area to contain aircraft during descent profile while allowing sufficient room for uncontrolled aircraft operations.

5. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL between a 15-mile radius and a 20-mile radius north of the Armel VORTAC and south of the Armel VORTAC. This airspace is needed to provide an area to contain aircraft during descent profile en route to Dulles Airport from the north and the south while allowing sufficient room for uncontrolled aircraft operations.

6. That airspace extending upward from 4,500 feet MSL to and including 10,000 feet MSL between a 15-mile radius and a 20-mile radius west of the Armel VORTAC. This airspace is needed to provide descent profile for aircraft en route to Dulles Airport from the west and to allow sufficient room for VFR operations near mountainous terrain west of Dulles Airport.

7. That airspace extending upward from 4,500 feet MSL to and including 10,000 feet MSL 20 miles southeast of the Baltimore VORTAC bounded on the north by V–93 (Baltimore VORTAC 122° radial), on the east by V–93 (Patuxent VORTAC 013° radial), and on the south by V–308 (Nottingham VORTAC 085° radial). This airspace is needed to provide an area to contain aircraft during descent profile en route to Baltimore-Washington International Airport from the southeast and to allow sufficient room for VFR operations.

The preceding gereral summary of the proposed TCA airspace configuration identifies that airspace which is necessary to contain large turbojet aircraft operations at Andrews Air Force Base, Baltimore-Washington International Airport, Dulles International Airport, and Washington National Airport. ATC will provide control and separation of all flights within the proposed airspace boundaries. Furthermore, ATC authorization is requisite to aircraft operations within that airspace. Establishment of this TCA will greatly enhance the safety of flight within the congested airspace overlying the greater Baltimore/Washington, DC, metropolitan area by facilitating the separation of controlled and uncontrolled flight operations. Section 71.401 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

Regulatory Evaluation Summary

This section summarizes the full regulatory evaluation prepared by the FAA that provides more detailed estimates of the economic consequences of this proposed regulatory action. This summary and the full evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, Federal, State and local governments, as well as anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, a significant adverse effect on competition, or is highly controversial.

The FAA has determined that this proposal is not "major" as defined in the executive order, therefore a full regulatory analysis, that includes the identification and evaluation of cost reducing alternatives to the proposal, has not been prepared. Instead, the agency has prepared a more concise document termed a regulatory evaluation that analyzes only this proposal without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains an initial regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96–354) and an international trade impact assessment. If more detailed economic information is desired than is contained in this summary, the reader is referred to the full regulatory evaluation contained in the docket.

The new proposed Washington Tri-Area TCA would encompass four airports: Dulles International, Baltimore-Washington International, Washington National, and Andrews Air Force Base. This proposed TCA would be known as the Washington Tri-Area TCA since it would incorporate three areas: Maryland, Virginia, and the District of Columbia. It is unique from other TCA actions because it would create one TCA out of an existing TCA plus two ARSA's.

This proposal is intended to lower the likelihood of midair collisions by increasing the capability of the ATC system to separate aircraft in terminal airspace around Dulles International, Baltimore-Washington International, and Washington National Airports plus Andrews Air Force Base. This action was prompted by data indicating that a high percentage of near midair collisions reported to the FAA in terminal areas involve VFR aircraft that are not required to be under the control of ATC. Thus, the objective of this proposal is to increase safety substantially while accommodating the legitimate concerns of airspace users.

Costs-Benefits Analysis

a. Costs

The FAA estimates the total cost expected to accrue from implementation of the proposed Washington Tri-Area TCA to be $5.5 million (discounted) in 1987 dollars, over the next 15 years. About $5.1 million (discounted) or 93 percent of the total estimated costs represent costs expected to be incurred by the FAA primarily for additional personnel and equipment. The remaining costs would be incurred by GA aircraft operators for the purchase and installation of Mode C transponders. Costs incurred by GA aircraft operators without Mode C transponders have already been absorbed in the previous rule: "Transponder With Automatic Altitude Reporting Capability Requirement (Mode C) (53 FR 23356, June 21, 1988)." The potentially affected GA aircraft

operators are assumed to have the other types of avionics equipment already (such as operable two-way radio and VOR) required for entering a TCA. The only aircraft without this equipment would be non-electrical and antique types. Costs to these types of aircraft operators have already been accounted for by the Mode C rule. Therefore, affected aircraft operators who operate solely in the ARSA would incur only the opportunity cost of capital by being required to acquire, install, and maintain Mode C transponders one year earlier than they would be required to do in accordance with the Mode C rule.

b. Benefits

Since deregulation of the airline industry in 1978, passenger enplanements, on the average, have been on a dramatic rise. This activity has led to large increases in aircraft operations, particularly for part 121 (Large Transport Category Aircraft) aircraft operators. As the result of this traffic density activity, increased risk exposure in terms of potential midair collisions has become a concern. Since 1978, the FAA has implemented additional regulatory initiatives primarily aimed at mitigating this potential safety problem. Some of those safety initiatives included modification of selected TCA design configurations, coupled with the establishment of ARSA's from Terminal Radar Service Areas (TRSA's). Most recently the FAA has implemented rules expanding Mode C requirements and mandating Terminal Collision Avoidance Systems (TCAS) on large air carrier aircraft. These two regulatory actions are aimed at enhancing aviation safety by lowering the likelihood of midair collisions. As a continuation of this effort to enhance aviation safety, the FAA has announced the proposed establishment of nine TCA's in 1987. This proposal represents one of these TCA initiatives.

This proposal is expected to generate potential benefits primarily in the form of enhanced safety to the aviation community and the flying public. Such safety, for instance, would take the form of reduced casualty losses, namely aviation fatalities and property damages. This reduction would be the result of a lowered likelihood of midair collisions because of increased positive control in airspace to be established as the Washington Tri-Area TCA. In addition, potential benefits are expected to accrue in the form of improved operational efficiency of FAA air traffic controllers.

Ordinarily, the potential safety benefits of this proposal would be the reduction in the likelihood of all those midair collisions caused by the proposed TCA as opposed to the existing ARSA's. However, due to the Mode C rule (and to some extent the TCAS rule), the number of potential midair collisions avoided by this proposal is expected to be significantly lower. Nevertheless, this proposal is still expected to accrue benefits in terms of enhanced safety, though on a much smaller scale. This point can be illustrated with the use of statistical models based on actual and projected critical near midair collisions (CNMAC's) incidents in lieu of actual midair collisions. Midair collisions involving part 135 aircraft and especially part 121 aircraft are rare. However, the use of CNMAC's will serve to illustrate, to some degree, the potential improvements in aviation safety of implementing this proposal. Simple regression analyses were prepared for this evaulation. (See Appendix A of the detailed regulatory evaluation for a discussion and illustration of the regression analyses.) They focused on CNMAC's and aircraft operations in 23 TCA's and in a random sample of 23 of the 79 ARSA's that existed in 1988 (based on CNMAC data for 1986 and 1987). The results of these analyses indicate that TCA's have approximately 68 percent fewer CNMAC's annually, on average, than ARSA's. While there is no demonstrated relationship between CNMAC's and actual midair collisions, the lower CNMAC rate suggests more efficient separation of aircraft in congested areas.

As the result of these findings, if the existing Dulles International and Baltimore-Washington International ARSA's were to remain unchanged, and the Mode C and TCAS rules were not in effect, the Dulles International and Baltimore-Washington International Terminal Areas would be expected to experience a combined average of 4 CNMAC's annually or 60 CNMAC's over the next 15 years. If, however, the ARSA's were to become a TCA, this figure would reduce to a combined average of 1.3 CNMAC's annually or 19 CNMAC's over the next 15 years. Thus, over the next 15 years, this proposal could result in the reduction of 41 (60–19) CNMAC's. However, it is important to note that the vast majority of these potential CNMAC's would never occur as predicted primarily because of the Mode C and TCAS rules.

As stated earlier, this proposal would create one TCA by converting two ARSA's and expanding the boundaries around the existing Washington, DC TCA (Washington National and Andrews). The expansion of The Washington, DC TCA also could result in a reduction of CNMAC's, just as the conversion of the two ARSA's could. However, the FAA does not believe the expansion of the Washington, DC TCA would significantly reduce CNMAC's to the extent the conversion of the two ARSA's would. This is because the proposed rule would only expand the ceiling from 7,000 to 10,000 feet MSL and lateral boundaries by only 5 nautical miles, around airspace that is already controlled by a TCA. In addition, since Washington National and Andrews are already a TCA, they are already reaping the benefits of a lowered likelihood of CNMAC's.

According to Phase II of the Mode C rule, as of December 1990, aircraft operating within 10 nautical miles (except for flights under the outer 5-mile shelf) of an ARSA primary airport must be equipped with Mode C. Phase I of this rule required, as of July 1989, aircraft operating within 30 nautical miles of a TCA to be equipped with a Mode C transponder. These requirements are expected to reduce significantly the likelihood of midair collisions in ARSA's and TCA's. For this reason, two types of potential safety benefits would accrue from this proposal:

1. Enhanced safety one year earlier than otherwise would be expected within 10 nautical miles of the Dulles International and Baltimore-Washington ARSA's, except for airspace under the shelf, as the result the Mode C equipment requirement. This benefit would be attributed entirely to this proposal.

2. Safety would be enhanced further, in terms of a lowered likelihood of midair collisions, as the result of expanding the lateral boundaries of the Dulles International and Baltimore-Washington International ARSA's by 10 nautical miles through converting the ARSA's to a TCA. This benefit would be attributed in part to this proposal, but mostly to the Mode C rule.

Thus, the potential safety benefits of the establishment of a new TCA, while positive, would be less than would otherwise be expected to accure in the absence of the Mode C and TCAS rules. Since this proposal essentially extends the affects of the Mode C rule, virtually all potential benefits are assumed to be part of that rule. Such benefits cannot be estimated separately because they are considered to be inextricably linked to the Mode C rule. Over a 15-year period, the Mode C rule is expected to generate total potential safety benefits of $344 million (discounted, 1987 dollars). (The

Mode C rule benefits estimate of $310 million for 10 years has been adjusted to a 15-year period for comparability to the TCAS rule and other FAA rulemaking actions.) It is important to note that part of these safety benefits would be attributed to the TCAS rule. Thus, the potential safety benefits of this proposal and the Mode C and TCAS rules are considered to be inextricably linked. This "inextricably linked" relationship has been discussed in detail in the respective regulatory evaluations for the Mode C and TCAS rules.

Another potential benefit of the proposal rule would be improved operational efficiency of FAA air traffic controllers. Under the proposed rule, Mode C transponder requirements would ease controller workload per aircraft being controlled because of the reduction in radio communications. It also would make potential traffic conflicts more readily apparent to the controller. The impact of the controller workload increased by separation requirements in the proposed TCA would be somewhat offset because of the controller's ability to adjust the volume of VFR traffic in any given portion of the TCA. Improved operational efficiency should generate other types of benefits in the form of significant reductions in the number of VFR aircraft requests denied and VFR aircraft delayed during busy periods. As the result of converting the existing Dulles International and Baltimore-Washington International ARSA's to a TCA and increasing the controlled airspace around the current Washington DC TCA, the improved operational efficiency would accrue because of the availability of additional air traffic controllers and equipment. If the Dulles International and Baltimore-Washington International ARSA's and the Washington DC TCA were to remain intact, additional air traffice controllers and equipment would not be required. Therefore, the potential benefits of improved operational efficiency, not considered to be quantifiable in monetary terms in this evaluation, would be attributed to this proposal rather than either the Mode C rule or TCAS rule.

c. Comparison of Costs and Benefts

The total cost that would accrue from implementation of the proposed rule is estimated to be $5.5 million (discounted) in 1987 dollars. Approximately $448,000 or 8 percent of this total cost estimate would fall on those GA aircarft operators without Mode C transponders in the form of opportunity costs by requiring them to acquire such avionics equipment (including maintenance) one year sooner than they otherwise would under the Mode C rule. The typical individual GA aircraft operator affected would incur an estimated one-time cost ranging from $86 to $191 (discounted) under the proposed rule. (As a the result of the opportunity cost concept, the derivation of these cost estimates is too complex to discuss briefly. Therefore, the reader should refer to the detailed regulatory evaluation that is contained in the docket. It will provide a full explanation of the method used to derive these cost estimates.) The potential safety benefits of the proposed rule would be the lowered likelihood of midair collisions primarily from the conversion of the existing ARSA's to a TCA. The number of midair collisions avoided and their respective monetary values cannot be estimated for this proposal independent of the Mode C and TCAS rules, but the FAA believes the risk would be substantially reduced. An FAA analysis prepared for this evaluation, however, has shown that critical near midair collisions occur approximately two-thirds less often in a TCA than in an ARSA. The FAA believes that even after the aviation community complies with the Mode C and TCAS rules, locations converting from ARSA's to TCA's would continue to experience reduced CNMAC's. The proposed rule also would generate improved operational efficiency benefits of FAA air traffic controllers, though they are not considered to be quantifiable in monetary terms.

Clearly, in view of the cost of compliance relative to the significant reduction in the likelihood of midair collisions as well as improved operational efficiency in the Dulles International and Baltimore-Washington International Terminal Areas, and to a lesser extent the expansion of the existing Washington, DC TCA, around Washington National and Andrews Air Force Base, the FAA firmly believes the proposed rule would be cost-beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportately burdened by Government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities." The small entities that could be potentially affected by the implementation of this proposed rule are unscheduled operators of aircraft for hire (Standard Industrial Classification Code 4511) who own nine or fewer aircraft. According to FAA Order 2100.14A (Regulatory Flexibility Criteria and Guidance), the definition of a small entity, in terns of an air taxi operator, is one with nine aircraft owned, but not necessarily operated.

Virtually all the aircraft operators affected by this proposed rule would be those who acquire Mode C transponder capability. The FAA believes that all unscheduled aircraft operators (namely, air taxi operators) potentially affected by this proposed rule already have Mode C transponders. This is because such operators regular fly in or near airports where radar approach control service has been established. Even if some of these operators were to acquire, install, and maintain Mode C transponders, the cost would not have a significant economic impact on a substantial number of them. The annual FAA threshold for significant economic impact is $3,700 (1987 dollars) for a small entity.

If we were to assume that a particular aircraft operator had nine aircraft without transponders, then annual one-time cost per impacted aircraft would be approximately $210. The total annual one-time cost would amount to an estimated $1,800 ($210 × 9). Thus, the annual worse case cost for a small entity would fall far below the FAA's annual threshold of $3,700. A number of people, however, who operate small single-engine piston airplanes, without Mode C transponders, are expected to incur small economic impacts. Such people are not defined as small entities under the RFA. Therefore, the FAA believes this proposed rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The proposed rule would not have an effect on the sale of foreign aviation products or services in the United States. It would also not have an effect on the sale of U.S. products or services in foreign countries. This is because the proposed rule would only potentially impact small GA aircraft operators without Mode C, and not aircraft manufacturers. The average cost of acquiring Mode C capability is estimated to range from $900 (to upgrade from a Mode A transponder) to $2,000 (to acquire a Mode C transponder without having a Mode A transponder). The cost of acquiring Mode C capability is not considered to be high enough to discourage potential buyers of small GA airplanes.

Federalism Implications

This proposed regulation would not have substantial direct effects on the

states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposed rule will not have sufficient federalism implications to warrant the preparation of a Federalism assessment.

Conclusion

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this proposed regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is certified that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control areas and Airport radar service areas.

The Proposed Amendment

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

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

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

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

§ 71.401 [Amended]

2. Section 71.401 is amended as follows:

Washington, DC [Removed]

Washington Tri-Area, DC [New]

Primary Airports and Navigational Aid

Andrews AFB (ADW) (lat. 38°48'40" N., long. 76°52'05" W.).

Baltimore-Washington International (BWI) (lat. 39°10'30" N., long. 76°40'10" W.).

Washington National (DCA) (lat. 38°51'07" N., long. 77°02'17" W.).

Dulles International (IAD) (lat. 38°56'39" N., long. 77°27'26" W.).

Armel VORTAC (AML) (lat. 38°56'04" N., long. 77°26'01" W.).

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL within a 7-mile radius of the Armel VORTAC; within a 7-mile radius of the Baltimore VORTAC; within a 7-mile radius of the Andrews VORTAC; and within a 7-mile radius of the Washington VOR; excluding the airspace bounded on the north by an east/west line 1.5-mile north of the Fort Meade NDB (lat. 39°05'04" N., long. 76°45'37" W.), on the east by a north/south line 2 miles east of the Fort Meade NDB, and on the south and west by the 7-mile radius of the Baltimore VORTAC; excluding that airspace bounded to the north by an east/west line along lat. 38°46'20" N., on the east by a north/south line along long. 76°54'25" W., to the 7-mile radius of the Andrews VORTAC, and on the west by a north/south line along long. 76°59'30" W., to the 7-mile radius of the Washington VOR; excluding Prohibited Area P-56.

Area B. That airspace extending upward from 1,500 feet MSL to and including 10,000 feet MSL beginning at lat. 38°41'35" N., long. 77°01'19" W., then counterclockwise along the NM DME arc of the Andrews VORTAC to lat. 38°58'25" N., long. 76°52'52" W., then counterclockwise along the 10 NM DME arc Washington VOR to lat. 38°57'57" N., long. 77°12'04" W., to lat. 38°45'11" N., long. 77°12'04" W., then counterclockwise along the 10 NM DME arc of the Washington VOR to the point of beginning; and that airspace beginning at lat. 39°05'23" N., long. 77°18'19" W., then counterclockwise along the 12 NM DME arc of the Armel VORTAC to lat. 38°46'22" N., long. 77°18'59" W., to the point of beginning; and that airspace beginning at lat. 38°58'22" N., long. 76°37'30" W., counterclockwise along the 12 NM DME arc of the Baltimore VORTAC to lat. 39°07'18" N., long. 76°54'39" W., to the point of beginning. Excluding areas designated as Area A, Area E, and Area F.

Area C. That airspace extending upward from 2,500 feet MSL to and including 10,000 feet MSL between a 10 NM radius and a 15 NM radius beginning at lat. 38°38'41" N., long. 77°12'04" W., then counterclockwise along the 15 NM DME arc of the Washington VOR to lat. 38°36'36" N., long. 77°03'47" W., then counterclockwise along the 15 NM DME arc of the Andrews VORTAC to lat. 38°50'44" N., long. 76°33'02" W., to lat. 39°06'33" N., long. 77°03'22" W., then counterclockwise along the 15 NM DME arc of the Washington VOR to lat. 39°04'27" N., long. 77°12'04" W., to the point of the beginning; and that airspace between a 12 NM radius and a 15 NM radius beginning at lat. 39°08'58" N., long. 77°18'11" W., then counterclockwise along the 15 NM DME arc of the Armel VORTAC to lat. 38°42'46" N., long. 77°19'06" W., to lat. 38°46'22" N., long. 77°18'59" W., then clockwise along the 12 NM DME arc of the Armel VORTAC to lat. 39°05'23" N., long. 77°18'19" W., to the point of beginning; and that airspace beginning at lat. 39°09'32" N., long. 76°58'57" W., then clockwise along the 15 NM DME arc of the Baltimore VORTAC to lat. 38°56'07" N., long. 76°33'12" W., to lat. 38°58'22" N., long. 76°37'30" W., then counterclockwise along the 12 NM DME arc of the Baltimore VORTAC at lat. 39°07'18" N., long. 76°54'39" W., to the point of beginning. Excluding that airspace designated as Area A, Area B, Area E, Area F, and that airspace contained in Restricted Area R-4001B when active.

Area D. That airspace extending upward from 3,500 feet MSL to and including 10,000 feet MSL between the 15 NM radius and the 20 NM radius of the Andrews VORTAC and the Washington VOR and the Baltimore VORTAC beginning at lat. 38°40'20" N., long. 76°28'37" W., to lat. 39°02'09" N., long. 76°16'12" W., then clockwise along the 20 NM DME arc of the Baltimore VORTAC to lat. 39°21'19" N., long. 77°01'09" W., to lat. 39°16'31" N., long. 77°20'51" W., to lat. 39°08'58" N., long. 77°18'11" W., then counterclockwise along the 15 NM DME are of the Armel VORTAC to lat. 39°04'27" N., long 77°12'04" W., then clockwise along the 15 NM DME arc of the Washington VOR to lat. 39°06'16" N., long. 76°58'16" W., then clockwise along the 15 NM DME arc of the Baltimore VORTAC to lat. 38°55'40" N., long. 76°35'10" W., then clockwise along the 15 NM DME arc of the Andrews VORTAC to lat. 38°36'36" N., long. 77°03'47" W., then clockwise along the 15 NM DME arc of the Washington VOR to lat. 38°43'12" N., long. 77°18'08" W., then clockwise along the 15 NM DME arc of the Armel VORTAC to lat. 38°42'46" N., long. 77°19'06" W., to lat. 38°36'41" N., long. 77°19'19" W., then counterclockwise along the 20 NM DME arc of the Washington VOR to lat. 38°31'47" N., long. 77°06'11" W., then counterclockwise along the 20 NM DME arc of the Andrews VORTAC to the point of beginning. Excluding that airspace described as Area A, Area B, Area C, Area E, and that airspace contained in Restricted Areas R-4001A and R-4001B when active.

Area E. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL between the 15 NM radius and the 20 NM radius of the Armel VORTAC beginning at lat. 38°43'20" N., long. 77°38'11" W., to lat. 38°39'05" N., long. 77°41'32" W., then counterclockwise along the 20 NM DME arc of the Armel VORTAC to lat. 38°36'38" N., long. 77°34'07" W., along the boundary of Restricted Area R-6608A to lat. 38°37'00" N., long. 77°34'07" W., to lat. 38°37'50" N., long. 77°32'20" W., to lat. 38°37'00" N., long. 77°25'34" W., to lat. 38°36'11" N., long. 77°25'08" W., then counterclockwise along the 20 NM DME arc of the Armel VORTAC to lat. 38°37'06" N., long. 77°19'52" W., then counterclockwise along the 20 NM DME arc of the Washington VOR to lat. 38°36'41" N., long. 77°19'19" W., to lat. 38°42'46" N., long. 77°19'06" W., then clockwise along the 15 NM DME arc of the Armel VORTAC to the point of beginning; and that airspace beginning at lat. 39°08'56" N., long. 77°37'57" W., to lat. 39°13'13" N., long. 77°41'16" W., then clockwise along the 20 NM DME arc of the Armel VORTAC to lat. 39°15'49" N., long. 77°23'46" W., to lat. 39°16'31" N., long. 77°20'51" W., to lat. 39°08'58" N., long. 77°18'11" W., then counterclockwise along the 15 NM DME arc of the Armel VORTAC to the point of beginning; and that airspace beginning at lat. 38°42'46" N., long. 77°19'06" W., to lat. 39°08'58" N., long. 77°18'11" W., then clockwise along the 15 NM DME arc of the Armel VORTAC to lat. 39°04'27" N., long. 77°12'04" W., to lat. 38°38'41" N., long. 77°12'04" W., then clockwise along the 15 NM DME arc of the Washington VOR to lat. 38°43'12" N., long. 77°18'08" W., then clockwise along the 15 NM DME arc of the Armel VORTAC to the point of beginning;

and that airspace beginning at lat. 39°06'33" N., long. 77°03'22" W., to lat. 38°50'44" N., long. 76°33'02" W., then counterclockwise along the 15 NM DME arc of the Andrews VORTAC to lat. 38°55'40" N., long. 76°35'10" W., then counterclockwise along the 15 NM DME arc of the Baltimore VORTAC to lat. 38°56'07" N., long. 76°33'12" W., to lat. 39°09'32" N., long. 76°58'57" W., then counterclockwise along the 15 NM DME arc of the Baltimore VORTAC to lat. 39°06'16" N., long. 76°58'16" W., then counterclockwise along the 15 NM DME arc of the Washington VOR to the point of beginning.

Area F. That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL beginning at lat. 38°44'39" N., long. 77°32'49" W., then counterclockwise along the 10 NM DME arc of the Armel VORTAC to lat. 38°44'04" N., long. 77°28'36" W., then counterclockwise along the 2 NM DME arc of the Manassas Airport to the point of beginning.

Area G. That airspace extending from 4,500 feet MSL to and including 10,000 feet MSL beginning at lat. 39°08'56" N., long. 77°37'57" W., to lat. 39°13'13" N., long. 77°41'16" W., then counterclockwise along the 20 NM DME arc of the Armel VORTAC to lat. 38°39'05" N., long. 77°41'33" W., to lat. 38°43'20" N., long. 77°38'11" W., then clockwise along the 15 NM DME arc of the Armel VORTAC to the point of beginning; and that airspace beginning at lat. 39°02'09" N., long. 76°16'12" W., to lat. 38°56'51" N., long. 76°12'20" W., to lat. 38°44'15" N., long. 76°16'05" W., to lat. 38°40'20" N., long. 76°28'37" W., to the point of beginning.

§ 71.501 [Amended]

3. Section 71.501 is amended as follows:

Baltimore-Washington International Airport, Baltimore, MD [Removed]

Dulles International Airport, VA [Removed]

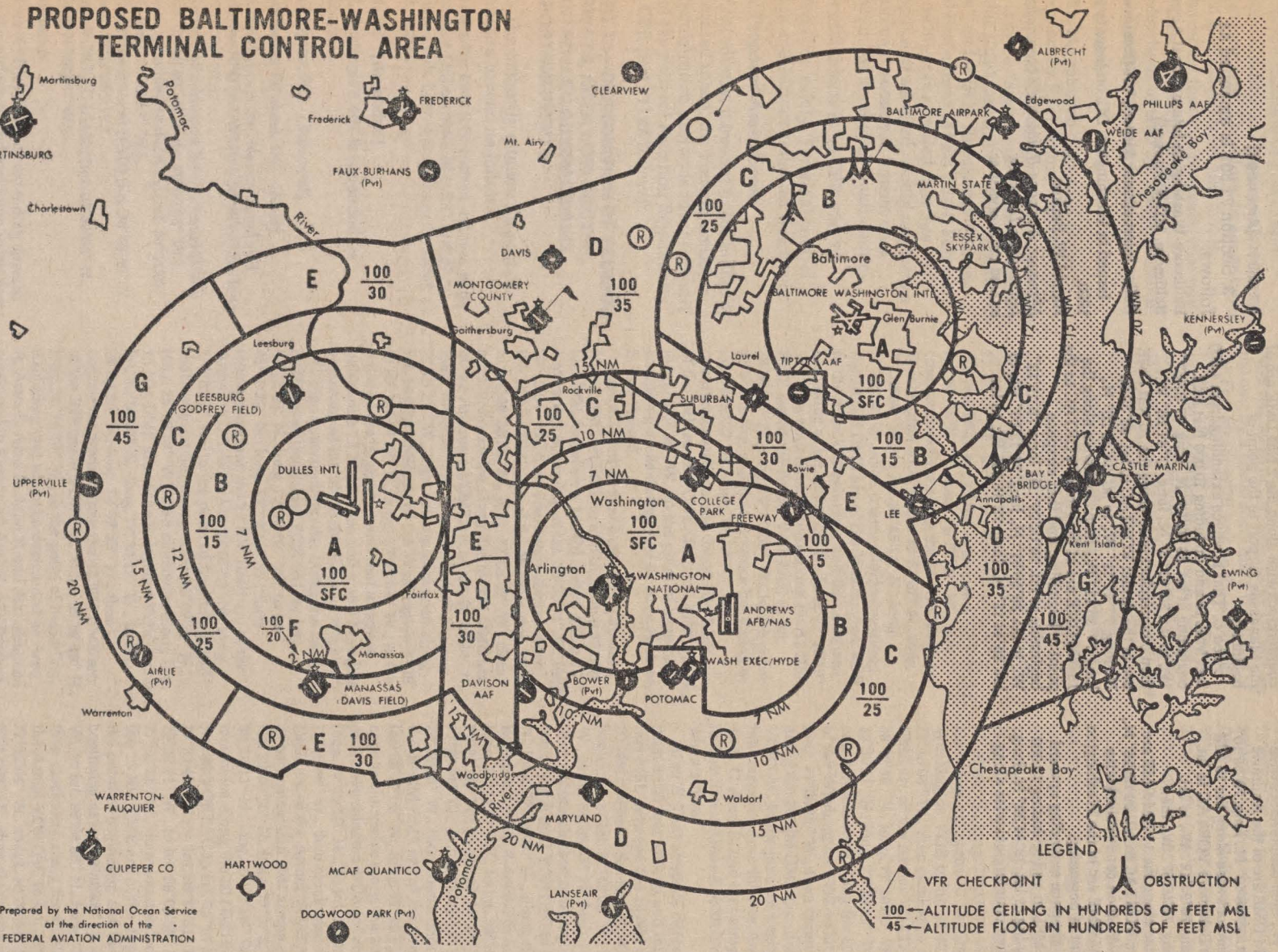
Issued in Washington, DC, on January 8, 1990.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

BILLING CODE 4910-13-M

PROPOSED BALTIMORE-WASHINGTON TERMINAL CONTROL AREA



Prepared by the National Ocean Service
at the direction of the
FEDERAL AVIATION ADMINISTRATION

[FR Doc. 90-912 Filed 1-12-90; 8:45 am]

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federal register

Tuesday
January 16, 1990

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 31
Federal Acquisition Regulation (FAR); Foreign Selling Costs; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

Federal Acquisition Regulation (FAR); Foreign Selling Costs

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are proposing to revise the Federal Acquisition Regulation (FAR) in subsections 31.205–1 and 31.205–38 to set forth new rules regarding the allowability of foreign selling costs on U.S. Government contracts.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before March 19, 1990 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th and F Streets, NW., room 4041, Washington, DC 20405. Please cite FAR Case 89–90 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 523–4755. Please cite FAR Case 89–90.

SUPPLEMENTARY INFORMATION:

A. Background

The revisions proposed by the Councils are intended to implement the requirements of Public Law 100–456 within the FAR. Similar rules have previously been published as Defense Department supplemental rules (DFARS) in order to meet the deadline imposed in that legislation. Commenters objected that such an implementation creates an undesirable degree of confusion and should have been done in the FAR. The Councils agree. That is the intent of the proposed revision.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are awarded on a competitive, fixed-price basis and the cost principles do not apply. An Initial Regulatory Flexibility Act Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 89–610 (FAR Case 89–90) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: January 5, 1989.

Jeremy F. Olson,

Acting Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 31 be amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205–1 is amended by revising paragraphs (d) and (f), and by removing paragraph (g) to read as follows:

§ 31.205–1 [Amended]

* * * * *

(d) The only allowable advertising costs are those that are—

(1) Specifically required by contract, or that arise from requirements of Government contracts and that are exclusively for—

(i) Recruiting personnel required for performing contractual obligations, when considered in conjunction with all other recruitment costs (but see 31.205–34);

(ii) Acquiring scarce items for contract performance; or

(iii) Disposing of scrap or surplus materials acquired for contract performance.

(2) Costs of activities to promote sales of products normally sold to the U.S. Government, including trade shows, which contain a significant effort to promote exports from the United States. Such costs are allowable, notwithstanding subparagraphs (f)(1) and (3), subdivision (f)(4)(ii), and subparagraph (f)(5) of this subsection, subject to the limits contained in 31.205–38(c)(2). However, such costs do not include the costs of memorabilia (e.g. models, gifts, and souvenirs), alcoholic beverages, entertainment, and physical facilities which are primarily used for entertainment rather than product promotion.

* * * * *

(f) Unallowable public relations and advertising costs include the following:

(1) All public relations and advertising costs other than those specified in paragraphs (d) and (e) of this subsection, whose primary purpose is to promote the sale of products or services by stimulating interest in a product or product line (except for those costs made allowable under 31.205–38(c)), or by disseminating messages calling favorable attention to the contractor for purposes of enhancing the company image to sell the company's products or services.

(2) All costs of trade shows and other special events which do not contain a significant effort to promote the export sales of products normally sold to the U.S. Government.

(3) Costs of sponsoring meetings, symposia, seminars, and other special events when the principal purpose of the event is other than dissemination of technical information or stimulation of production.

(4) Costs of ceremonies such as corporate celebrations, and new product announcements.

(5) Costs of promotional material, motion pictures, videotapes, brochures, handouts, magazines, and other media that are designed to call favorable attention to the contractor and its activities (but see 31.205–13(a), Employee moral, health, welfare, food service, and dormitory costs and credits; 31.205–21, Labor relations costs; 31.205–43(c), Trade, business, technical, and professional activity costs; and 31.205–44, Training and education costs).

(6) Costs of souvenirs, models, imprinted clothing, buttons, and other momentos provided to customers or the public.

(7) Costs of memberships in civic and community organizations.

3. Section 31.205–38 is amended by revising the sixth sentence in paragraph (b) and by revising paragraphs (c) and (f) to read as follows:

§ 31.205–38 Selling costs.

* * * * *

(b) * * * Other market planning costs are allowable to the extent that they are reasonable and not in excess of the limitations of subparagraph (c)(2) of this subsection. * * *

(c)(1) Direct selling efforts are those acts or actions to induce particular customers to purchase particular products or services of the contractor. Direct selling is characterized by person-to-person contact and includes such activities as familiarizing a potential customer with the contractor's products or services, conditions of sale, service capabilities, etc. It also includes negotiation, liaison between customer and contractor personnel, technical and consulting activities, individual demonstrations, and any other activities having as their purpose the application or adaptation of the contractor's products or services for a particular customer's use. The cost of direct selling efforts is allowable if reasonable in amount.

(2) The costs of broadly-targeted and direct selling efforts and market planning other than long-range, which are incurred in connection with a significant effort to promote export sales of products normally sold to the U.S. Government, including the costs of exhibiting and demonstrating such products, are allowable on contracts with the U.S. Government provided—

(i) The costs are allocable, reasonable, and otherwise allowable under this Subpart 31.2.

(ii) That, with respect to a business segment which allocates to U.S. Government contracts $2,500,000 or more of such costs in any fiscal year of such business segment, the allowable amount of such costs shall not exceed 110% of the amount that would have been allocated to contracts of the same value had foreign selling costs been allowable in the prior year.

(iii) That, in order to comply with Public Law 100–456, the substance of this subparagraph (c)(2) shall apply to all contracts and subcontracts of the contractor with the Department of Defense being performed by the contractor on the first day of the contractor's first full fiscal year that begins on or after December 22, 1988, whether or not a contract or subcontract contains this subparagraph (c)(2). This subdivision (c)(2)(iii) is effective until September 28, 1991.

* * * * *

(f) Additional allowability requirements for Foreign Military Sales (FMS) contracts with the Department of Defense are contained in DFARS 225.7304 and 225.7305.

* * * * *

[FR Doc. 90–927 Filed 1–12–90; 8:45 am]
BILLING CODE 6820–JC–M

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CFR CHECKLIST

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§§ 1.61–1.169	25.00	Apr. 1, 1989
§§ 1.170–1.300	18.00	Apr. 1, 1989
§§ 1.301–1.400	15.00	Apr. 1, 1989
§§ 1.401–1.500	28.00	Apr. 1, 1989
§§ 1.501–1.640	16.00	Apr. 1, 1989
§§ 1.641–1.850	19.00	Apr. 1, 1989
§§ *1.851–1.1000	31.00	Apr. 1, 1989
§§ 1.1001–1.1400	17.00	Apr. 1,1989
§§ 1.1401–End	23.00	Apr. 1, 1989
2–29	20.00	Apr. 1, 1989
30–39	14.00	Apr. 1, 1989
40–49	13.00	Apr. 1, 1989
50–299	16.00	Apr. 1, 1989
300–499	16.00	Apr. 1, 1989
500–599	7.00	Apr. 1, 1989
600–End	6.50	Apr. 1, 1989
27 Parts:		
1–199	24.00	Apr. 1, 1989
200–End	14.00	Apr. 1, 1989
28	27.00	July 1, 1989

Title	Price	Revision Date
29 Parts:		
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1910 (§§ 1910.1000 to end)	13.00	July 1, 1989
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1926	11.00	July 1, 1989
1927–End	25.00	July 1, 1989
30 Parts:		
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200–699	14.00	July 1, 1989
700–End	20.00	July 1, 1989
31 Parts:		
0–199	14.00	July 1, 1989
200–End	18.00	July 1, 1989
32 Parts:		
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1–39, Vol. II	19.00	[4] July 1, 1984
1–39, Vol. III	18.00	[4] July 1, 1984
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1–199	30.00	July 1, 1989
200–End	20.00	July 1, 1989
34 Parts:		
1–299	22.00	July 1, 1988
300–399	12.00	July 1, 1988
400–End	26.00	July 1, 1988
35	10.00	July 1, 1989
36 Parts:		
1–199	12.00	July 1, 1989
200–End	21.00	July 1, 1989
37	14.00	July 1, 1989
38 Parts:		
0–17	21.00	July 1, 1988
18–End	19.00	July 1, 1988
39	14.00	July 1, 1989
40 Parts:		
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1, 1–11 to Appendix, 2 (2 Reserved)	13.00	[5] July 1, 1984
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7	6.00	[5] July 1, 1984
8	4.50	[5] July 1, 1984
9	13.00	[5] July 1, 1984
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45 Parts:		
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1200–End	17.00	Oct. 1, 1988
46 Parts:		
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200–499	20.00	Oct. 1, 1988
500–End	10.00	Oct. 1, 1988
47 Parts:		
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1988 to Dec. 31, 1988. The CFR volume issued January 1, 1988, should be retained.

[3] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1988. The CFR volume issued January 1, 1987, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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