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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:

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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.

ATLANTA, GA

WHEN: January 11, at 9:00 a.m.
WHERE: Centers for Disease Control
1600 Clifton Rd., NE.
Auditorium A
Atlanta, GA (Parking available)
RESERVATIONS: 1–800–347–1997.

WASHINGTON, DC

WHEN: January 24, 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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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 907 and 908

[FV-91-214FR]

Expenses and Assessment Rates for the 1990-91 Fiscal Year for California-Arizona Navel and Valencia Oranges and Increased Expenses for the 1989-90 Fiscal Year for Navel Oranges

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Order Nos. 907 and 908 for California-Arizona navel and Valencia oranges, respectively, for the 1990–91 fiscal years established for each order. This action also authorizes increased expenditures for the 1989–90 fiscal year for the navel orange marketing order. Funds to administer these programs are derived from assessments on handlers. This action is needed in order for the Navel and Valencia Orange Administrative Committees, which are responsible for local administration of the respective orders, to have sufficient funds to meet the expenses of operating the programs. Expenses are incurred on a continuous basis.

EFFECTIVE DATE: January 2, 1991.

FOR FURTHER INFORMATION CONTACT: Sheila A. Young, Marketing Specialist, MOAB, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–5992.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order Nos. 907 (7 CFR part 907) and 908 (7 CFR part 908), both as amended, regulating the handling of California-Arizona navel and Valencia oranges, respectively. Both orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in the Executive Order 12291 and has been determined to be a "non-major" rule.

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

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

There are approximately 130 handlers of navel oranges and 115 handlers of Valencia oranges subject to regulation under the navel and Valencia orange marketing orders. There are approximately 4,070 producers of navel oranges and 3,500 producers of Valencia oranges in the respective production areas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts for the last three years 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 California-Arizona navel and Valencia orange producers and handlers may be classified as small entities.

The navel and Valencia orange marketing orders require that assessment rates for a particular fiscal year shall apply to all assessable navel or Valencia oranges handled from the beginning of such year. An annual budget of expenses is prepared by the Navel Orange Administrative Committee (NOAC) and the Valencia Orange Administrative Committee (VOAC) and submitted to the Department for approval. The members of the NOAC and VOAC are handlers and producers of navel and Valencia oranges. They are familiar with the NOAC's and VOAC's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of navel or Valencia oranges. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay each committee's expected expenses. The recommended budget and rate of assessment is usually acted upon by each committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their individual expenses.

The NOAC met on October 16, 1990, and unanimously recommended 1990–91 fiscal year expenditures of $1,525,075 and an assessment rate of $0.0296 per carton of navel oranges. In comparison, 1989–90 fiscal year budgeted expenditures were $1,377,425, and the assessment rate was $0.027 per carton. Major expenditures categories in the 1990–91 budget are $405,590 for program administration, $239,410 for compliance activities, $698,570 for the field department, $178,000 for direct expenses, and $3,505 for a salary reserve. This compares to $367,525, $188,805, $646,350, $171,300, and $3,445, respectively, for the 1989–90 fiscal year. Expenditures for the 1990–91 fiscal year are greater than for 1989–90 because of increases in salaries and benefits for the NOAC's personnel, the hiring of additional personnel for the compliance department, and office relocation expenses. Assessment income for 1990–91 is expected to total $1,391,200 based on shipments of 47 million cartons of oranges. Interest and incidental income is estimated at $58,500. The NOAC may expend $75,375 in operational reserve funds to meet budget expenses. The increase in the assessment rate was recommended to minimize the expected shortfall in income. Additional reserve funds may be used to meet any other

unanticipated deficit in assessment income.

The VOAC also met on October 16, 1990, and unanimously recommended 1990–91 fiscal year expenditures of $743,215 and an assessment rate of $0.032 per carton of Valencia oranges. In comparison, 1989–90 fiscal year budgeted expenditures were $709,730, and the assessment rate was $0.028 per carton. Major expenditure categories in the 1990–91 budget are $172,590 for program administration, $101,870 for compliance activities, $297,260 for the field department, $170,000 for direct expenses, and $1,495 for a salary reserve. This compares to $166,050, $85,300, $292,025, $164,800, and $1,555, respectively, for the 1989–90 fiscal year. Assessment income for 1990–91 is expected to total $640,000 based on shipments of 20 million cartons of oranges. Interest and miscellaneous income is estimated at $28,000. The VOAC may expend $75,215 in operational reserve funds to meet budgeted expenses. The increase in the assessment rate was recommended to offset the expected shortfall in income. Additional reserve funds may be used to meet any unanticipated deficit in assessment income.

At the October 16, 1990, meeting, the NOAC voted unanimously to increase its 1989–90 budgeted expenditures from $1,377,425 to $1,524,780—a $147,355 increase. The 1989–90 expenditures of $1,377,425 were established by a final rule published in the Federal Register on January 10, 1990 (55 FR 841). The increase is needed due to costs associated with relocation of the NOAC office and increased expenses by its field and compliance departments.

During the 1989–90 fiscal year, actual income was $1,558,375, $252,375 more than the $1,306,000 estimate included in the January 10 final rule. The higher 1989–90 income was due to increased shipments of navel oranges. Thus, funds are available to meet the higher expenses as final by this rule. An increase in the $0.027 rate of assessment established by the January 10 final rule for the 1989–90 fiscal year is not needed.

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

These actions revise section 907.227, add new sections 907.228 and 908.230, and are based on committee recommendations and other information. A proposed rule was published in the November 29, 1990, issue of the Federal Register (55 FR 49530). Comments on the proposed rule were invited from interested persons until December 10, 1990. No comments were received.

After consideration of the information and recommendation submitted by the committees, the comments received, and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

These actions should be expedited because the committees need to have sufficient funds to pay their expenses, which are incurred on a continuous basis. In addition, handlers are aware of these actions, which were recommended by the committees at a public meeting. Therefore, it is also found that good cause exists for not postponing the effective date of these actions until 30 days after publication of the Federal Register (5 U.S.C. 553).

List of Subjects in 7 CFR Part 907

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

List of Subjects in 7 CFR Part 908

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 907 and 7 CFR part 908 are amended as follows:

Note: These sections will not appear in the Code of Federal Regulations.

1. The authority citation for both 7 CFR parts 907 and 908 continues to read as follows:

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

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

2. A new § 907.228 is added to read as follows:

§ 907.228 Expenses and assessment rate.

Expenses of $1,525,075 by the Navel Orange Administrative Committee are authorized and an assessment rate of $0.0296 per carton of navel oranges is established for the fiscal year ending on October 31, 1991. Unexpended funds from the 1990–91 fiscal year may be carried over as a reserve.

§ 907.227 [Amended]

3. Section 907.227 is revised by changing "$1,377,425" to "1,524,780."

4. A new § 908.230 is added to read as follows:

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

§ 908.230 Expenses and assessment rate.

Expenses of $743,215 by the Valencia Orange Administrative Committee are authorized and an assessment rate of $0.032 per carton of Valencia oranges is established for the fiscal year ending on October 31, 1991. Unexpended funds from the 1990–91 fiscal year may be carried over as a reserve.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–30556 Filed 12–31–90; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 910

[Lemon Regulation 750]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona lemons that may be shipped to domestic markets during the period from December 30, 1990, through January 5, 1991. Consistent with program objectives, such action is needed to balance the supplies of fresh lemons with the demand for such lemons during the period specified. This action was recommended by the Lemon Administrative Committee (Committee), which is responsible for local administration of the lemon marketing order.

EFFECTIVE DATE: Regulation 750 (7 CFR part 910) is effective for the period from December 30, 1990, through January 5, 1991.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture (Department), room 2524–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3923.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 910 (7 CFR part 910), as amended,

regulating the handling of lemons grown in California and Arizona. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

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

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

There are approximately 70 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,000 lemon producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

The California-Arizona lemon industry is characterized by a large number of growers located over a wide area. The Committee's estimate of the 1990–91 production is 42,412 cars (one car equals 1,000 cartons at 38 pounds net weight each), compared to 37,881 cars during the 1989–90 season. The production area is divided into three districts which span California and Arizona. The Committee estimates District 1, central California, 1990–91 production at 6,600 cars compared to the 4,158 cars produced in 1989–90. In District 2, southern California, the crop is expected to be 24,700 cars compared to the 24,292 cars produced last year. In District 3, the California desert and Arizona, the Committee estimates a production of 11,112 cars compared to the 9,436 cars produced last year. According to the National Agricultural Statistics Service, 1990–91 lemon production is expected to total 40,200 cars, 8 percent above the 1989–90 season and 1 percent more than the crop utilized in 1988–89. This estimate will be reviewed in following weeks to account for losses in the lemon crop due to the recent devastating freeze.

The three basic outlets for California-Arizona lemons are the domestic fresh, export, and processing markets. The domestic (regulated) fresh market is a preferred market for California-Arizona lemons. Based on its crop estimate of 42,412 cars, the Committee estimates that about 42.2 percent of the 1990–91 crop will be utilized in fresh domestic channels (17,900 cars), compared with the 1989–90 total of 16,600 cars, about 44 percent of the total production of 37,881 cars in 1989–90. Fresh exports are projected at 20 percent of the total 1990–91 crop utilization compared with 22 percent in 1989–90. Processed and other uses would account for the residual 37.8 percent compared with 34 percent of the 1989–90 crop.

Volume regulations issued under the authority of the Act and Marketing Order No. 910 are intended to provide benefits to growers and consumers. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of lemons in the market throughout the marketing season and to avoid unreasonable fluctuations in supplies and prices.

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

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

The Committee submitted its marketing policy for the 1990–91 season to the Department on June 19. The marketing policy discussed, among other things, the potential use of volume and size regulations for the ensuing season. The Committee considered the use of volume regulation for the season. This marketing policy is available from the Committee or Ms. Rodriguez. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

The Committee met publicly on December 26, 1990, in Newhall, California, to consider the current and prospective conditions of supply and demand and, by an 8 to 1 vote, recommended that 375,000 cartons is the quantity of lemons deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations were compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, the preceding week's shipments and shipments to date, crop conditions, weather and transportation conditions, and a reevaluation of the prior week's recommendation in view of the above.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1990–91 marketing policy. This recommended amount is 76,000 cartons above the estimated projections in the Committee's current shipping schedule.

During the week ending on December 22, 1990, shipments of lemons to fresh domestic markets, including Canada, totaled 341,000 cartons compared with 312,000 cartons shipped during the week ending on December 23, 1989. Export shipments totaled 93,000 cartons compared with 119,000 cartons shipped during the week ending on December 23, 1989. Processing and other uses accounted for 423,000 cartons compared with 284,000 cartons shipped during the week ending on December 23, 1989.

Fresh domestic shipments to date for the 1990–91 season total 6,405,000 cartons compared with 6,169,000 cartons shipped by this time during the 1989–90 season. Export shipments total 2,978,000 cartons compared with 3,131,000 cartons shipped by this time during 1989–90. Processing and other use shipments total 6,300,000 cartons compared with 4,499,000 cartons shipped by this time during 1989–90.

For the week ending on December 22, 1990, regulated shipments of lemons to the fresh domestic market were 341,000 cartons on an adjusted allotment of 285,000 cartons, resulting in overshipments of 56,000 cartons. Regulated shipments for the current week (December 23 through December

29, 1990) are estimated at 300,000 cartons on an adjusted allotment of 244,000 cartons. Thus, overshipments of 56,000 cartons should be carried forward to the week ending on January 5, 1991.

The average f.o.b. shipping point price for the week ending on December 22, 1990, was $9.28 per carton based on a reported sales volume of 341,000 cartons compared with last week's average of $9.38 per carton on a reported sales volume of 342,000 cartons. The 1990–91 season average f.o.b. shipping point price to date is $11.93 per carton. The average f.o.b. shipping point price for the week ending on December 23, 1989, was $11.85 per carton; the season average f.o.b. shipping point price at this time during 1989–90 was $13.81 per carton.

The Department's Market News Service reported that, as of December 26, the demand for lemons is good and the market is much higher. At the meeting, a Committee member stated that it was difficult to ascertain market conditions in view of freezing weather in the production area. That number indicated that the crop in District 1 is expected to have been damaged seriously, that additional information needs to be gathered on crop damage in District 2, and that while the District 3 crop was damaged, most of District 3's crop has been harvested and is in storage. Several members stated that they supported continuing regulation until more information is available on the impact of the freeze. Several members also indicated that regulation should be maintained at this time due to high levels of fruit in storage. The Committee, by an 8 to 1 vote, recommended volume regulation for the week ending on January 5, 1991.

Based upon pre-freeze estimates of fresh utilization levels indicated by the Committee and an economic model developed by the Department, the California-Arizona 1990–91 season average fresh on-tree price is estimated at $8.83 per carton, 106 percent of the projected season average fresh on-tree parity equivalent price of $8.35 per carton. The California-Arizona 1989–90 season average fresh on-tree price is estimated at $9.02, 121 percent of the projected season average fresh on-tree parity equivalent price of $7.47 per carton.

Limiting the quantity of lemons that may be shipped during the period from December 30, 1990, through January 5, 1991, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of lemons to market.

Based on considerations of supply and market conditions, it is found that this action will tend to effectuate the declared policy of the Act.

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

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

In addition, market information needed for the formulation of the basis for this action was not available until December 26, 1990, and this action needs to be effective for the regulatory week which begins on December 30, 1990. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 910

Lemons, Marketing agreements, Reporting and recordkeeping requirements.

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

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

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

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

2. Section 910.1050 is added to read as follows:

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

§ 910.1050 Lemon Regulation 750.

The quantity of lemons grown in California and Arizona which may be handled during the period from December 30, 1990, through January 5, 1991, is established at 375,000 cartons.

Dated: December 27, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–30621 Filed 12–28–90; 10:39 am]

BILLING CODE 3410–02–M

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7 CFR Part 1230

[No. LS–89–106]

Pork Promotion and Research

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination; final rule.

SUMMARY: The purpose of this final rule is to (1) terminate the provision of the Pork Promotion, Research, and Consumer Information Order (Order) containing a schedule for remittance of assessments on sales of porcine animals to the National Pork Board (Board), and (2) issue a remittance schedule in the regulations which implement the Order provisions. This new remittance schedule allows a 15-day time period for remittance of assessments rather than the 10-day period contained in the current schedule. In addition, a marketing period of any consecutive 4-week period can be used as an alternative to the currently specified monthly marketing period. These changes will facilitate the remittance of pork assessments by purchasers of porcine animals.

EFFECTIVE DATE: February 1, 1991.

ADDRESSES: Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Division; AMS-USDA, Room 2624–S; P.O. Box 96456; Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch—202/382–1115.

SUPPLEMENTARY INFORMATION: This final action was reviewed under Executive Order No. 12291 and Departmental Regulation 1512–1 and has been determined to be a nonmajor rule under the criteria contained therein.

This action also was reviewed under the Regulatory Flexibility Act (5 U.S.C. 601–612). Many producers and collecting persons subject to the Order may be classified as small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. These changes will make the remittance requirements less restrictive, greatly facilitate the remittance process, and eliminate the need for some purchasers

to make costly changes in their recordkeeping and reporting procedures to avoid incurring late payment penalties.

The information collection requirements contained in the provisions of the Pork Promotion, Research, and Consumer Information Order, which would be affected by this action, have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0651–0151 in accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

The Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819) (Act) approved December 23, 1985, authorizes the establishment of a national pork promotion, research, and consumer information program. The program is funded by an assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessment on imported porcine animals, pork, and pork products. The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected at 51 FR 36383; and amended at 53 FR 1909 and 53 FR 30243). Assessments began on November 1, 1986.

The Order requires that producers pay to the Board an assessment of 0.25 percent of the market value of each porcine animal upon sale. For purposes of collecting and remitting assessments, porcine animals are divided into three separate categories: (1) Feeder pigs, (2) slaughter hogs, and (3) breeding stock. The Order specifies that purchasers of feeder pigs, slaughter hogs, and breeding stock shall collect an assessment on these animals if assessments are due. The Order further provides that for the purpose of collecting and remitting assessments, a person engaged as a commission merchant, an auction market, or a livestock market in the business of receiving such procine animals for sale on commission for or on behalf of a producer shall be deemed to be a purchaser.

The procedures for collection and remittance of assessments are presently contained in § 1230.71(b) of the Order. Under that section, purchasers of porcine animals are required to collect assessments from producers upon the sale of porcine animals, if an assessment is due, and remit such assessment to the Board. Section 1230.71(b)(4) of the Order contains a remittance schedule which is based on the month in which the porcine animals subject to assessment were marketed and a 10-day time limit following that month for remittance of assessments. Assessments totaling $25 or more per month must be remitted on a monthly basis and are due by the 10th day of the month following the month in which the porcine animals were marketed. Assessments of less than $25 per month can be accumulated and be remitted quarterly and are due by the 10th day of the month following the end of the quarter in which the porcine animals were marketed. Compliance with the due date is based on the applicable postmark date of the remittance or the date the remittance is received by the Board whichever is earlier.

Purchasers who do not remit assessments by the dates specified under the remittance schedule are subject to a late payment charge pursuant to § 1230.76 of the Order. As provided in that section, any assessment not paid when due shall be increased at the rate of 1.5 percent per month until paid.

Based on its experience, since the assessment collection and remittance began in November 1986, the Board has found that a due date for the remittance of assessments to the Board based on the 10th day of the month following the month or quarter in which the porcine animals were marketed is too restrictive. It is the Board's view that the 10-day time limit does not allow sufficient time for many purchasers, i.e., meat packers, auction markets, commission firms, other livestock market agencies, or individual producers, to process and remit assessments to the Board without incurring a late payment charge pursuant to § 1230.76. According to the Board, this is particularly true for those purchasers who operate multiple buying stations in outlying areas. Assessments collected at the buying stations must be first sent to the purchaser's headquarter's office for processing before being remitted to the Board. This procedure significantly reduces the number of days the purchaser has remaining in the 10-day period in which to submit the assessments.

Based on its records of remittance receipt dates, it is the Board's recommendation that assessments be remitted by the 15th day of the month following the month in which the porcine animals were marketed or 15th day of the month following the end of a quarter for those purchasers whose assessments total less than $25 per month and who choose to submit assessments on a quarterly basis and not the 10th day as is presently required. The Board believes that 15 days will provide ample time for even those purchasers with outlying buying stations to remit assessments by the established due dates and thus not be subject to late payment charges.

The Board also believes that there should be more flexibility in the timeframes for remittances and assessments by purchasers. Section 1230.71(b)(4) specifies that the due date for remitting assessments to the Board shall be the 10th day of the month following the month in which the porcine animals were marketed. Some purchasers' established business accounting cycles are based on thirteen 4-week periods rather than twelve calendar months. Purchasers who close their books or end an accounting cycle for a 4-week period on a date which does not coincide with the ending date of a calendar month could have assessments collected from the sales of porcine animals in two consecutive months, some of which would be past due before they closed out their books for the 4-week period. According to the Board, such purchasers cannot comply with a due date based solely on a calendar month without changing their established accounting cycles or establishing separate recordkeeping and reporting practices which could create an unnecessary administrative burden and result in increased operating expenses.

These changes will not significantly affect the Board's total monthly receipts or prevent the Board from meeting its monthly financial obligations. On August 13, 1990, AMS published in the **Federal Register** (55 FR 32919) a proposed rule to (1) terminate the provisions of the Pork Promotion, Research, and Consumer information Order containing a schedule for remittance of assessments on sales of porcine animals to the National Pork Board, and (2) issue a remittance schedule in the regulations extending the deadline from 10 to 15 days and establishing a marketing period of 4 consecutive weeks. The proposed rule was published with a request for comments by September 12, 1990.

The Department received four comments—one from the National Pork Board, one from a major meat industry trade association, one from a national livestock marketing association, and one from a State livestock marketing association. All four commenters favored the proposed change, and they expressed opinions that the proposed changes were more consistent with industry practices, would facilitate collection and remittance of

assessments, and would help the purchasers avoid late payment charges.

Accordingly, the provisions of § 1230.71(b) of the Order containing the schedule for remittance of assessments on sales of porcine animals to the Board are being terminated. Additionally, this action adopts a revised schedule which provides that assessments of $25 or more per month are due by the 15th day of the month following the month in which the porcine animals were marketed or by the 15th day following the end of a Board-approved consecutive 4-week period in which the procine animals were marketed and that purchasers who assessments total less than $25 per month and whose choose to submit assessments on a quarterly basis will be required to submit assessments by the 15th day of the month following the quarter in which the porcine animals were marketed.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, CFR part 1230 is amended as set forth below:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

§ 1230.71 [Amended]

2. In § 1230.71 in the introductory text of paragraph (b)(4), the words "in accordance with the following remittance schedule": and paragraphs (b)(4) (i), (ii), (iii), and (iv) are removed and a period added to the end of paragraph (b)(4) introduction text.

3. Section 1230.111 is added under "Assessments" to Subpart B—Rules and Regulations, to read as follows:

§ 1230.111 Remittance of assessments on domestic porcine animals.

Assessments on domestic porcine animals shall be remitted to the National Pork Board pursuant to § 1230.71(b) in accordance with the following remittance schedule.

(a) Monthly assessments totaling $25 or more shall be remitted to the Board by the 15th day of the month following the month in which the porcine animals were marketed or by the 15th day following the end of a Board-approved, consecutive 4-week period in which the porcine animals were marketed.

(b) Assessments totaling less than $25 during each month of a quarter in which the porcine animals were marketed may be accumulated and remitted by the 15th day of the month following the end of a quarter. The quarters shall be: January through March; April through June; July through September; October through December.

(c) Assessments totaling $25 or more during any month of a quarter must be remitted by the 15th day of the month following the month of the quarter in which the assessments totaled $25 or more, together with any unremitted assessments from the previous month(s) of the quarter, if applicable.

(d) Assessments collected during any calendar quarter and not previously remitted as described in paragraphs (b) or (c) of this section must be remitted by the 15th day of the month following the end of the quarter regardless of the amount.

Done at Washington, DC on December 5, 1990.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 90–30559 Filed 12–31–90; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–CE–72–AD; Amendment 39–6848]

Airworthiness Directives; Certain Aerostar International, Inc. RX and S Series Balloons

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) 90–25–09. This AD was previously made effective as to all known U.S. owners and operators of certain Aerostar International, Inc. RX and S series balloons on December 4, 1990 by individual letters. The AD requires the replacement of all Advanced Fiber Technology (AFT) suspension cables with stainless/galvanized steel suspension cables. The AD was prompted by an incident involving an Aerostar Model S–77A balloon where the envelope separated from the basket prior to the launch. The actions specified by this AD are intended to prevent cable degradation and possible loss of the balloon.

DATES: Effective January 14, 1991, as to all persons except those persons to whom it was made immediately effective by priority letter AD 90–25–09, issued December 4, 1990, which contained this amendment.

ADDRESSES: The applicable service information or replacement cables may be obtained from Aerostar International, Inc., 1813 E. Avenue, P.O. Box 5057, Sioux Falls, South Dakota 57117–5057; Telephone (605) 331–3500; or the applicable service information may be examined in the Regional Rules Docket, FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT:

Mr. Gregory J. Michalik, Chicago Aircraft Certification Office, 2300 E. Devon Avenue, Des Plaines, Illinois 60018; Telephone (312) 694–7135.

SUPPLEMENTARY INFORMATION: .

On December 4, 1990, priority letter AD 90–25–09 was issued and made effective immediately as to all known U.S. owners and operators of Aerostar International, Inc. Models RX–6, RX–7, RX–8, S–49A, S–50A, S–52A, S–55A, S–57A, S–60A, S–66A and S–77A balloons. The AD requires the immediate replacement of all Advanced Fiber Technology (AFT) suspension cables with stainless/galvanized steel suspension cables on Models S–66A and S–77A balloons. It also requires initial and repetitive inspections of these cables and the replacement thereof, if found damaged, on all other model balloons with under 100 hours time-in-service (TIS) on the AFT suspension cables, and the replacement upon the accumulation of 100 hours TIS regardless of whether damage is found. The AD was prompted by an incident involving an Aerostar Model S–77A balloon where the envelope separated from the basket prior to the launch. Examination of the cables on this balloon revealed serious strength degradation and heat exposure. Analysis of AFT suspension cables on other balloons have also shown strength loss, but not to the extent of the affected Model S–77A balloon.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued December 4, 1990, to all known U.S. owners and

operators of Aerostar International, Inc. Models RX–6, RX–7, RX–8, S–49A, S–50A, S–52A, S–55A, S–57A, S–60A, S–66A and S–77A balloons. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to Section 39.13 of part 39 of the Federal Aviation Regulations to make it effective as to all persons.

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 determined further 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.

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 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:

90–25–09 Aerostar International, Inc.

Amendment 39–6848; Docket No. 90–CE–72–AD

Applicability: Models RX–6, RX–7, RX–8, S–49A, S–50A, S–52A, S–55A, S–57A, S–60A, S–66A and S–77A Balloons (all serial numbers) equipped with Advanced Fiber Technology (AFT) suspension cables, certified in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent balloon cable degradation and loss of the balloon, accomplish the following:

(a) On Models S–66A and S–77A balloons, prior to further flight replace all AFT suspension cables with stainless/galvanized steel suspension cables in accordance with the instructions in Aerostar International, Inc. Service Bulletin No. 129, dated November 28, 1990.

(b) On all model balloons other than Models S–66A and S–77A with less than 100 hours time-in-service (TIS) on the AFT suspension cables, prior to further flight, and thereafter before each flight, inspect all AFT suspension cables for degradation in accordance with the instructions in Aerostar International, Inc. Service Bulletin No. 129, dated November 28, 1990.

(1) If signs of degradation are found, prior to further flight replace the AFT suspension cables with stainless/galvanized steel suspension cables in accordance with the instructions in Aerostar International, Inc. Service Bulletin No. 129, dated November 28, 1990.

(2) If no signs of degradation are found, return the balloon to service and reinspect before each flight until the accumulation of 100 hours TIS on the AFT suspension cables at which time paragraph (c) of this AD must be accomplished.

(3) The AFT suspension cables may be replaced if no signs of degradation are found as terminating action for the inspection requirements of this AD.

(c) On all model balloons other than Models S–66A and S–77A with 100 hours or more TIS on the AFT suspension cables, unless already accomplished per paragraph (b)(1) or (b)(3) of this AD, prior to further flight replace the AFT suspension cables with stainless/galvanized steel suspension cables in accordance with the instructions in Aerostar International, Inc. Service Bulletin No. 129, dated November 28, 1990.

Note: Operators who do not have records of hours TIS on individual AFT suspension cables may substitute balloon hours TIS in lieu thereof.

(d) The inspections and cable replacements required by this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by FAR 43.7, and must be entered into the aircraft records showing compliance with this AD in accordance with FAR 43.11.

(e) When the AFT suspension cables have been replaced pursuant to this AD, the inspection requirements of this AD are no longer required.

(f) An alternate method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Chicago Aircraft Certification Office, FAA, 2300 East Devon Avenue, Room 232, Des Plaines, Illinois 60018. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

(g) Replacement cables or copies of the applicable service information may be obtained from Aerostar International, Inc., 1813 E. Avenue, P.O. Box 5057, Sioux Falls, South Dakota 57117–5057; Telephone (605) 331–3500; or the applicable service information may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on January 14, 1991 as to all persons except those persons to whom it was made immediately effective by priority letter AD 90–25–09, issued December 4, 1990, which contained this amendment.

Issued in Kansas City, Missouri, on December 11, 1990.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–30587 Filed 12–31–90; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Hazardous Substances and Articles, Administration and Enforcement Regulations; Test Methods for Simulating Use and Abuse of Toys, Games, and Other Articles Intended for Use by Children

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its regulations prescribing apparatus and procedures for tests to simulate use and abuse of toys and children's articles. These tests include an impact test, which consists of dropping the object to be tested from a specified height onto a specified surface a specified number of times. Existing provisions of the regulations specify that a ⅛-inch thickness of vinyl-asbestos tile over a base of concrete at least 2.5 inches thick will be used by the Commission when it conducts compliance testing. Vinyl-asbestos tile is no longer generally available. The Commission amends its regulations to specify a commercially available material, asbestos-free vinyl-composition tile, as the covering of the surface used for the impact test. The Commission promulgates this amendment to enable manufacturers, importers, and sellers of toys and children's articles to duplicate the surface to be used by the Commission for the impact test.

EFFECTIVE DATE: The amendment promulgated in this final rule shall become effective February 1, 1991.

FOR FURTHER INFORMATION CONTACT: John Preston, Mechanical Engineer, Engineering Sciences Directorate, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 492–6494.

SUPPLEMENTARY INFORMATION:

A. Background

Provisions of the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261 *et seq.*) authorize the Commission to issue rules banning toys and children's articles which present a "mechanical hazard" during normal use or when subjected to "reasonably foreseeable damage or abuse." See sections 2(f)1(D), 2(q)(1)(A), 2(s), and 3(e) of the FHSA (15 U.S.C. 1261(f)1(D), (q)(1)(A), (s), and 1262(e)).

In 1975, the Commission issued regulations which prescribe tests to simulate normal use and reasonably foreseeable abuse to which toys and children's articles may be subjected. These regulations were issued by a notice published in the Federal Register on January 7, 1975 (40 FR 1480), and are codified at 16 CFR 1500.50 through 1500.53.

These regulations specify the apparatus and procedure which the Commission will use for a series of tests to expose potential hazards resulting from normal use or the reasonably foreseeable abuse of the item being tested. 16 CFR 1500.51 applies to toys and other articles intended for use by children 18 months of age or less. 16 CFR 1500.52 applies to toys and other articles intended for use by children over 18 months but less than 36 months of age. 16 CFR 1500.53 applies to toys and articles intended for children over 36 months of age but not over 96 months of age.

The regulations codified at 16 CFR 1500.50 through 1500.53 do not contain pass/fail criteria, and do not by themselves ban any toy or children's article. Instead, they are used in conjunction with specific banning regulations issued under the authority of the FHSA to identify toys and children's articles which present a particular mechanical hazard.

For example, toys and other articles intended for children under three years of age which present a choking, aspiration, or ingestion hazard because of small parts are banned by provisions of 16 CFR 1500.18 and 16 CFR part 1501. 16 CFR part 1501 prescribes a test to determine whether an article is hazardous to children younger than three years of age because the article or any of its components is too small. The test for small parts, set forth at 16 CFR 1501.4, requires the article being tested to be subjected to specified provisions of the "use and abuse" tests codified at 16 CFR 1500.51, 1500.52 and 1500.53. The products being tested must pass the test for small parts both before and after "use and abuse" testing. See 16 CFR 1501.4(b).

B. Impact Test

The "use and abuse" tests for each age group include an impact test. See 16 CFR 1500.51(b), 1500.52(b), and 1500.53(b). The impact test consists of dropping the article being tested from a specified height onto a specified surface a specified number of times. The surface specified for the impact test is a ⅛-inch thickness of "type IV vinyl-asbestos tile, as specified in Federal Specification SS–T–312A," over a concrete base at least 2.5 inches thick. See 16 CFR 1500.51(b)(2), 1500.52(b)(2), and 1500.53(b)(2).

Neither the small parts regulation nor the "use and abuse" tests require manufacturers, importers, distributors, or retailers to conduct premarket testing of toys and children's articles. Instead, the FHSA and these rules provide that products must meet all applicable requirements if tested by the Commission. However, many firms that import, manufacture, or sell toys and children's articles conduct tests of the products they handle to ensure that those items comply with all applicable requirements issued under provisions of the FHSA. Additionally, many independent laboratories offer testing services to toy manufacturers and importers.

Vinyl-asbestos tile is no longer generally available. Consequently, importers and manufacturers of toys, laboratories, and other firms which test toys and children's articles are not able to construct or replace the surface specified for the impact test by 16 CFR 1500.51(b), 1500.52(b), and 1500.53(b).

The Commission has conducted a series of tests and analyses to find a commercially available material to replace vinyl-asbestos tile as a component of the surface specified for the impact test. These tests and analyses demonstrate that an impact surface consisting of vinyl-composition tile over a concrete base has the same resilience as an impact surface as vinyl-asbestos tile over concrete. Consequently, impact tests conducted by dropping an object onto a surface of vinyl-composition tile over a concrete base will yield the same results as those obtained by dropping the same object onto an impact surface of vinyl-asbestos tile over concrete.*

For this reason, the Commission is amending provisions of 16 CFR 1500.51(b)(2), 1500.52(b)(2), and 1500.53(b)(2) to specify that the surface used for the impact test shall consist of a ⅛-inch thickness of asbestos-free vinyl-composition tile, as described in the 1979 amendment of Federal Specification SS–T–312B, over a concrete base at least 2.5 inches thick.

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* The tests and analyses conducted by the Commission are described in a memorandum from John Preston, ESMT, to Alan Schoem, CAAL, entitled "Response to PSA Request No. 3602, Change Specification for Floor Tile Referenced in Use & Abuse Test," dated June 20, 1988; a memorandum from Carl A. Fenstermacher, ESEL, to John T. Preston, ESMT, entitled "Impact Studies on Tile Samples," dated April 27, 1987; and Engineering Laboratory Report 546403, dated April 27, 1987. These documents are available for inspection in the Office of the Secretary, Consumer Product Safety Commission, room 420, 5401 Westbard Avenue, Bethesda, Maryland, from 8:30 a.m. to 5 p.m., Monday through Friday.

The vinyl-composition tile tested by the Commission is described as "Type IV—Vinyl-composition, Composition 1—Asbestos-free" tile in Paragraphs 1.2 and 3.1.4 of the Federal Specification, entitled Tile, Floor: Asphalt, Rubber, Vinyl, Vinyl-Asbestos, SS–T–312B, issued on October 10, 1974, as amended by Interim Amendment-1(YD), issued on November 14, 1979. These documents may be ordered from the General Services Administration, Specifications Unit, Room 6654, 7th and D Streets SW., Washington, DC 20407. The price of the specification and amendment is currently $1.00.

C. Statutory Authority

Sections 10(a) of the FHSA, 15 U.S.C. 1269(a), and section 30(a) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2079(a), authorize the Commission to issue regulations for the "efficient enforcement" of the FHSA. The Commission conducted this proceeding under the authority of section 10(a) of the FHSA in accordance with the rulemaking procedures specified by the Administrative Procedure Act (APA), 5 U.S.C. 553. Those procedures consist of publishing a notice of proposed rulemaking in the **Federal Register**; soliciting written comments from all interested parties; and issuing a final rule with an effective date at least 30 days after publication of the final rule in the **Federal Register**. As noted above, the "use and abuse" tests, set forth in 16 CFR 1500.50 through 1500.53, do not ban any toy or children's article. For that reason, section 3(e) of the FHSA, 15 U.S.C. 1262(e), regarding the issuance of a rule to ban a toy or children's article presenting an electrical, mechanical, or thermal hazard, is not applicable to this proceeding.

D. Comments Received and Commission Responses

In response to the notice proposing to change the impact surface specified in the regulation (54 FR 52418, December 21, 1989), the Commission received comments from the Toy Manufacturers of America (TMA); the Juvenile Products Manufacturers Association (JPMA); and Kiddie Products, Inc. The issues raised by these comments and the Commission's resolution of those issues are discussed below.

The TMA and the JPMA have identical comments. They recommend that the regulations, as amended, contain language to the effect that the new requirement for a vinyl (asbestos free) impact surface is equivalent to, and will provide results identical to, the vinyl-asbestos tile being replaced. They note that a statement of equivalency is found in the explanatory language to the proposed regulations and urge that it be included in the regulation itself. Since the results from testing on the two surfaces are identical, the Commission is adding such a statement of equivalency to the amended regulation itself.

Kiddie Products, Inc., recommends that both the alternative vinyl tile, which it finds acceptable as a substitute for the vinyl asbestos tile in the current rules, and the vinyl asbestos tile, be used in the impact tests. The Commission believes that it must have but one impact surface to conduct its own testing efficiently. Accordingly, the Commission has decided not to use alternative testing surfaces to implement its own impact testing procedures. After this regulation becomes effective, the Commission intends to test products by using only the abestos-free vinyl tile specified in the amended regulation.

E. Impact on Small Business

Section 603 of the Regulatory Flexibility Act (RCA), 5 U.S.C. 603, requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis of the impact of a proposed rule on small entities, including small businesses. Section 605(b) of the RCA provides that an agency is not required to prepare a regulatory flexibility analysis when the agency certifies that the rule will not, if issued, have a significant economic impact on a substantial number of small entities. In accordance with section 605(b) of the RFA, the Commission certifies that the amendment set forth below will not have a significant economic impact on a substantial number of small entities.

The final rule set forth below substitutes commercially available vinyl-composition tile for a material which is generally unavailable as a component of the surface used for the impact tests specified by 16 CFR 1500.51(b), 1500.52(b), and 1500.53(b). The Commission's purpose for this final rule is to enable manufacturers, importers, and sellers of toys and children's articles to duplicate the impact surface to be used by the Commission when performing the "use and abuse" tests, specified by 16 CFR 1500.51 through 1500.53, if those firms elect to conduct any of those tests. As noted above, provisions of the the FHSA and 16 CFR 1500.50 through 1500.53 do not require any person or firm to conduct premarket tests of any toy or children's article. Toys and children's articles must comply with applicable requirements when tested by the Commission.

Firms which have constructed the impact surface using the vinyl-asbestos tile specified by previous provisions of the "use and abuse" tests will not be required to replace that tile with the asbestos-free vinyl-composition title described in this rule. As noted above, tests and analyses performed by the Commission demonstrate that impact tests conducted by dropping objects onto a surface covered with asbestos-free vinyl-composition tile will yield the same results as those obtained dropping the same objects onto a surface covered with asbestos-free vinyl-composition tile. The Commission will recognize impact tests conducted on a surface covered with vinyl-asbestos tile meeting the requirements of Federal Specification SS–T–312A as equivalent to impact tests conducted on a surface covered with asbestos-free vinyl-composition tile.

[**Note:** Any firm contemplating removal of vinyl-asbestos tile should not sand that tile or its backing. Sanding vinal-asbestos tile or its backing can place fine particles of asbestos in the air. These asbestos particles, if inhaled, may cause cancer. If removal is contemplated, contact a certified asbestos removal consultant or contractor. Do not remove tile without appropriate precautions.]

G. Conclusion and Proposal

In accordance with provisions of the FHSA, 15 U.S.C. 1279(a), and under the authority of the CPSA, 15 U.S.C. 2079(a), the Commission hereby amends chapter II, subchapter C, part 1500 of title 16 of the Code of Federal Regulations, as follows:

List of Subjects in 16 CFR Part 1500

Consumer protection, Infants and children, Toys.

1. Section 1500.51(b)(2) is revised as follows:

§ 1500.51 Test methods for simulating use and abuse of toys and other articles intended for use by children 18 months of age or less.

* * * * *

(b) *Impact test* * * *

(2) *Impact medium.* The impact medium shall consist of a ⅛-inch (0.3-centimeter) nominal thickness of type IV vinyl-composition tile, composition 1—asbestos free, as specified by paragraphs 1.2 and 3.1.4 of Interim Amendment-1(YD), dated November 14, 1979, to the Federal Specification entitled Tile, Floor: Asphalt, Rubber, Vinyl, Vinyl-Asbestos, SS–T–312B, dated October 10, 1974,[1] over at least a 2.5-inch (6.4-centimeter) thickness of concrete. The impact area shall be at least 3 square feet (0.3 square meter). The Commission recognizes that this specified impact medium is the equivalent of, and will yield the same impact test results as, a surface covered with vinyl-asbestos tile meeting the requirements of Federal Specification SS–T–312A.

2. Section 1500.52(b)(2) is revised as follows:

[1] These documents may be ordered from the General Services Administration, Specifications Unit, Room 6654, 7th and D Streets, S.W., Washington, D.C. 20407. The price of the specification and amendment is $1.00.

§ 1500.52 Test methods for simulating use and abuse of toys and other articles intended for use by children over 18 but not over 36 months of age.

* * * * *

(b) *Impact test* * * *

(2) *Impact medium.* The impact medium shall consist of a ⅛-inch (0.3-centimeter) nominal thickness of type IV vinyl-composition tile, composition 1—asbestos free, as specified by paragraphs 1.2 and 3.1.4 of Interim Amendment-1(YD), dated November 14, 1979, to the Federal Specification entitled Tile, Floor: Asphalt, Rubber, Vinyl, Vinyl-Asbestos, SS–T–312B, dated October 10, 1974,[1] over at least a 2.5-inch (6.4-centimeter) thickness of concrete. The impact area shall be at least 3 square feet (0.3 square meter). The Commission recognizes that this specified impact medium is the equivalent of, and will yield the same impact test results as, a surface covered with vinyl-asbestos tile meeting the requirements of Federal Specification SS–T–312A.

3. Section 1500.53(b)(2) is revised as follows:

§ 1500.53 Test methods for simulating use and abuse of toys and other articles intended for use by children over 36 but not over 96 months of age.

* * * * *

(b) *Impact test* * * *

(2) *Impact medium.* The impact medium shall consist of a ⅛-inch (0.3-centimeter) nominal thickness of type IV vinyl-composition tile, composition 1—asbestos free, as specified by paragraphs 1.2 and 3.1.4 of Interim Amendment-1(YD), dated November 14, 1979, to the Federal Specification entitled Tile, Floor: Asphalt, Rubber, Vinyl, Vinyl-Asbestos, SS–T–312B, dated October 10, 1974,[1] over at least a 2.5-inch (6.4-centimeter) thickness of concrete. The impact area shall be at least 3 square feet (0.3 square meter). The Commission recognizes that this specified impact medium is the equivalent of, and will yield the same impact test results as, a surface covered with vinyl-asbestos tile meeting the requirements of Federal Specification SS–T–312A.

Dated: December 26, 1990.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 90–30607 Filed 12–31–90; 8:45 am]

BILLING CODE 6355–01–M

[1] See footnote 1 to § 1500.51.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM90–12–000]

Generic Determination of Rate of Return on Common Equity for Public Utilities

Order No. 532

Issued December 26, 1990.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing its seventh annual final rule determining the growth rate and flotation cost adjustment factors to be used in the quarterly indexing procedure during the year beginning February 1, 1991. A discounted cash flow (DCF) formula has been established to determine the average cost of common equity and a quarterly indexing procedure to calculate benchmark rates of return on common equity for public utilities. For this seventh annual proceeding, the Commission concludes that during the 12 months beginning February 1, 1991, the growth rate will be 4.3 percent and the appropriate flotation cost adjustment factor is 0.02 percent.

EFFECTIVE DATE: The final rule is effective January 25, 1991.

FOR FURTHER INFORMATION CONTACT:

For further technical information contact:

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, DC 20426, (202) 208–1283.

For further legal information contact:

MaryLou Lundin, Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, DC 20426, (202) 208–1243.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this final rule will be available on CIPS for 30 days fromn the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street NE., Washington, DC 20426.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is issuing its annual final rule determining the growth rate and flotation cost adjustment to be used in the quarterly indexing procedure during the year beginning February 1, 1991. The Commission has established a discounted cash flow (DCF) formula to determine the average cost of common equity for the jurisdictional operations of public utilities and a quarterly indexing procedure to calculate benchmark rates of return.[1] This is the seventh annual proceeding.[2] The

[1] The terms "public utilities" and "electric utilities" are used interchangeably.

[2] The annual proceedings were first established by Order No. 389, Generic Determination of Rate of Return on Common Equity for Electric Utilities, 49 FR 29,946 (July 25, 1984), FERC Statutes and Regulations, Regulations Preambles 1982–1985 ¶ 30,582 (July 18, 1984), *reh'g denied*, Order No. 389–A, 49 FR 46,351 (November 26, 1984). The first annual proceeding resulted in Order No. 420, 50 FR 21,802 (May 29, 1985), FERC Statutes and Regulations, Regulations Preambles 1982–1985 ¶ 30,644 (May 20, 1985), *reh'g denied*, Order No. 420–A, 50 FR 34,086 (August 23, 1985). The second annual proceeding resulted in Order No. 442, 51 FR 343 (January 6, 1986), III FERC Statutes and Regulations ¶ 30,677 (December 26, 1985), *reh'g granted in part, denied in part*, Order No. 442–A, 51 FR 22,505 (June 20, 1986). The third annual proceeding resulted in Order No. 461, 52 FR 11 (January 2, 1987), III FERC Statutes and Regulations ¶ 30,722 (December 24, 1986), *reh'g denied*, Order No. 461–A, 52 FR 5757 (February 26, 1987). The fourth annual proceeding resulted in Order No. 489, 53 FR 3342 (February 5, 1988), III FERC Statutes and Regulations ¶ 30,795 (January 29, 1988), *reh'g denied*, Order No. 489–A, 53 FR 11,991 (April 12, 1988). The fifth annual proceeding resulted in Order No. 510, 53 FR 51,752 (December 23, 1988), III FERC Statutes and Regulations ¶ 30,843 (December 19, 1988). The sixth annual proceeding resulted in Order No. 517, 55 FR 146 (January 3, 1990), III FERC Statutes and Regulations ¶ 30,871 (December 26, 1989). In Order No. 510, the Commission encouraged wider use of the generic rate of return in individual cases, citing several recent cases. *See, e.g.*, Connecticut Light and Power, 43 FERC ¶ 61,508 at 62,264, 62,267 (June 22, 1988); *reh'g*, 45 FERC ¶ 61,370 (December 6, 1988); Yankee Atomic Electric Co., 40 FERC ¶ 61,372 at 62,210 (September 30, 1987), *reh'g* 43 FERC ¶ 61,232 (May 6, 1988); Ocean State Power, 44 FERC ¶ 61,261 (August 19, 1988); and Allegheny Generating Co., 44 FERC ¶ 61,436, at 62,360 (September 30, 1988).

Commission concludes that the growth rate to be used in the quarterly indexing procedure during the 12 months beginning February 1, 1991 will be 4.3 percent. The Commission also concludes that 0.02 percent is an appropriate flotation cost adjustment factor for that period. Benchmark rates of return determined through these procedures will remain advisory, as were those resulting from the previous six annual proceedings.

II. Background

Section 205(a) of the Federal Power Act (FPA) requires that all electric rates subject to the jurisdiction of the Commission be "just and reasonable." [3] In the exercise of this statutory responsibility, the Commission sets rates of return on common equity that are fair to both utility ratepayers and utility stockholders. The allowed rate of return is now determined individually for each utility on a case-by-case basis.

In July 1984, the Commission adopted procedures for the generic determination of a benchmark rate of return on common equity and for its application in individual cases.[4] The Commission has conducted six prior proceedings to determine the average cost of common equity for the jurisdictional operations of public utilities, and has made these benchmark rates of return advisory only. Benchmark rates are intended to provide guidance to parties in rate proceedings and to serve as a reference point for the Commission in setting allowed rates of return. The Commission again requests that all rate case participants, including staff, evaluate the reasonableness of the applicable benchmark rate of return in light of the special circumstances of the specific utility.

The Commission issued a Notice of Proposed Rulemaking (NOPR) on July 31, 1990,[5] initiating the seventh annual proceeding to establish the growth rate and flotation cost adjustment factors to be used in the quarterly indexing formula for the year beginning February 1, 1991.[6]

[3] 16 U.S.C. 824d(a) (1988).

[4] *See supra* note 2.

[5] 55 FR 32,098 (August 7, 1990); IV FERC Statutes and Regulations ¶ 32,473 (July 31, 1990).

[6] Comment were filed by American Electric Power Service Corporation (AEP); Boston Edison Company, El Paso Electric Company and Montaup Electric Company jointly (hereinafter, Boston); Edison Electric Institute (EEI); and Basil L. Copeland, Jr. (Copeland). In addition, comments were received from the Commission's Financial Analysis Branch, Office of Electric Power Regulation.

III. Discussion

In prior proceedings, the Commission established a DCF methodology for estimating the rate of return on common equity. That formula is:

$k = (1 + .5g)\, y + g$

where:

k = market required rate of return
y = current dividend yield (current annual dividend rate divided by current market price)
g = expected annual dividend growth rate
(1 + .5g) = dividend adjustment factor for quarterly dividend payments

A. Dividend Yield

The dividend yield used in this DCF formula is the median of the dividend yields of those companies that remain in a sample of utilities after application of certain screening criteria. The Commission begins with a group of publicly-traded electric utilities or combination companies that meet the following standards:

(1) The utility is predominantly electric;

(2) The stock of the utility is traded on either the New York or the American Stock Exchange;

(3) The utility is included in the Compustat PC Utility data base; and

(4) The utility is not excluded by the Commission based on a case-by-case determination that its data are unavailable or inappropriate.[7]

A list of the 98 public utilities to be used in the quarterly updates is included as Appendix A to this rule.[8]

To compute the quarterly dividend yield the Commission excludes companies from the sample if:

(1) The company's common stock is no longer publicly traded due to merger or other action;

(2) The company has decreased or omitted a common dividend payment in the current or three prior quarters; or

(3) The Commission determines on a case-by-case basis that some other occurrence has caused the dividend yield for that company to be substantially misleading, which biases the resulting quarterly average.

The quarterly dividend yield for each company is computed by dividing the dividend rate by the price. The dividend rate is the "indicated dividend rate," which is the last declared quarterly dividend multiplied by four. The price used in calculating the quarterly dividend yield is the simple average of the three monthly high and low prices for that utility for the quarter. The dividend yield used in the quarterly indexing procedure is the average of the two most recent quarterly median yields for the entire sample.[9]

B. Growth Rate

In the NOPR,[10] the Commission proposed to rely primarily on a fundamental analysis approach and to estimate the expected long-term constant growth rate, as it has in the prior proceedings.[11] In a fundamental analysis approach, the two underlying components of expected annual dividend growth (growth from retention of earnings and growth from sales of new common stock) are evaluated. Growth from retention of earnings, or "internal growth", is a function of the expected retention ratio, "b", and the expected earned rate of return on common equity, "r". Growth from sales of new common stock, or "external growth", is a function of the amount of stock expected to be sold in relation to the company's existing common equity, "s", and the expected price at which those sales are made relative to book value "v". The formula for estimating the growth rate based on this fundamental analysis is $g = br + sv$.

The Commission also proposed to consider other data and methods for estimating the expected growth rate, including a two-stage growth analysis, primarily to check on the reasonableness of its growth rate determination based on the fundamental analysis.[12]

Three commenters make growth rate recommendations, ranging from 3.3 percent by Copeland to 4.3 percent by both Boston and EEI. See Table 1. Table 2 presents the raw growth rate data on which the commenters relied. Based on its review and evaluation of the growth rate analyses submitted by the commenters in this proceeding, the Commission finds the expected growth rate for use in the quarterly indexing procedure during the 12 months beginning February 1, 1991 to be 4.3 percent.

[7] Southwestern Public Service Company, which meets the first three standards, is excluded from the sample because its fiscal year does not end at the conclusion of a calendar quarter. This uncommon fiscal year causes its dividend yield to be out of step with the rest of the sample companies.

[8] There are two changes from the sample of 98 utilities used in the sixth annual proceeding: (1) Northwestern Public Service (NPS) began trading on the New York Stock Exchange on May 8, 1990, and has been added to the sample; and (2) NECO Enterprises, Inc., (NPT) sold the Newport Electric Corporation in March 1990. Consequently, NECO Enterprises, Inc. has been dropped from the sample.

[9] 18 CFR 37.4 (1990).

[10] 55 FR 32,098 (August 7, 1990); IV FERC Statutes and Regulations ¶ 32,473 (July 31, 1990).

[11] *See supra* note 2.

[12] The two-stage analysis involves separate evaluation of near-term and long-term dividend growth expectations.

TABLE 1.—SUMMARY OF GROWTH RATE RECOMMENDATIONS

Commenter	Growth rate	Basis for recommendations
1. Boston	4.3	1. Historical EPS and DPS growth rates. 2. Projected fundamental analysis. 3. Analyst forecasts.
2. EEI	4.3	1. Historical EPS and DPS growth rates.

TABLE 1.—SUMMARY OF GROWTH RATE RECOMMENDATIONS—Continued

Commenter	Growth rate	Basis for recommendations
		2. Base-year fundamental analysis. 3. Projected fundamental analysis. 4. Analyst forecasts.
3. Copeland	3.3	1. Historical EPS and DPS growth rates.

TABLE 1.—SUMMARY OF GROWTH RATE RECOMMENDATIONS—Continued

Commenter	Growth rate	Basis for recommendations
		2. Base-year fundamental analysis. 3. Analyst forecasts.

TABLE 2.—RAW GROWTH RATE DATA

Rate(s)	Type of rate	Commenter
Historical DPS Growth Rates:		
3.70	5-year median	Boston.
3.08	5-year median	EEI.
3.40	5-year average	Copeland.
4.30	10-year median	Boston.
4.14	10-year median	EEI.
Historical EPS Growth Rates:		
3.60	5-year median	Boston.
3.97	5-year median	EEI.
1.40	5-year average	Copeland.
4.70	10-year median	Boston.
4.63	10-year median	EEI.
Historical Book Value Growth Rates:		
3.10	5-year average	Copeland.
Base-Year Fundamental Growth Rates:		
	$(b)(r)+(s)(v)$	
4.31	4.12+0.19	Boston.
2.78	2.69+0.09	EEI.
3.15	2.54+0.61 [1]	Copeland.
Analyst Near-Term Forecasts:		
4.0	I/B/E/S median	Boston.
3.5	I/B/E/S median	EEI.
3.4	Value Line DPS median	Boston.
3.5	Value Line DPS median	EEI.
3.1	Value Line DPS median	Copeland.
3.5	Value Line EPS median	Boston.
3.5	Value Line EPS median	EEI.
3.4	Value Line EPS mean	Copeland.
3.2	Value Line Book Value mean	Copeland.
3.0	Merrill Lynch DPS median	Boston.
4.3	Merrill Lynch EPS mean	Boston.
4.0	Salomon Brothers Normalized Growth	Boston.
3.9	Salomon Brothers Normalized Growth	EEI.

DPS—Dividends per share.
EPS—Earnings per share.
I/B/E/S—Institutional Brokers Estimate System.
[1] This figure is revised from 0.8 in order to correct a mathematical error. *See infra* note 41.

1. Growth Rate Recommendations

a. *Boston's recommendation.* Boston recommends a growth rate of 4.3 percent, based on a combination of historical growth, fundamental analysis, and projections by analysts and investment advisory services.[13] [14]

For its fundamental growth rate analyses, Boston calculates the individual components of internal growth, "b" and "r", and external growth, "s" and "v". It computes the historical retention ratio, "b", of the Value Line Electric Utility Composite for the period 1980–1989. During 1989 the retention ratio was 25.8 percent. Over the past 10 years it averaged about 30 percent: in five of the ten years the retention ratio was less than 30 percent, and in the other five years it was greater than 30 percent.

Boston believes that the retention rate for electric utilities in the future will be higher than the current low level. First, it notes a tendency for retention rates to be low when utility earned returns are low and high when utility earned returns are high. This tendency coupled with a Value Line projection that earned returns in 1992–1994 will be about 1.5 percentage points higher than in the current year, leads Boston to conclude that investors would expect a higher retention rate in the future. Second, Boston contends that most growth projections indicate that over the next several years growth in earnings will be greater than growth in dividends and consequently retention rates will increase.

Based on its review of historic retention ratios and its analysis of the projected direction of retention ratios, Boston concludes that a retention ratio of 30 percent for the electric utility industry is warranted.[15]

Boston bases its estimate of the expected return on equity, "r", on three factors. First, Boston examines the historic earned rates of return for the Value Line Electric Utility Composite from 1980 through 1989. It finds that the industry average earned rates of return

[13] [14] Boston Comments at 6, 24.

[15] *Id.* 13–16.

between 1982 and 1987 fluctuated between 13.5 and 14.5 percent, with an average of 14.0 percent. The return declined to 12.3 percent in 1988, and still further to 11.9 percent in 1989. Second, Boston takes into consideration Value Line's projected return on equity for its Electric Utility Composite for the period 1992–1994 of 13.4 percent.[16] Third, Boston examines Value Line's projected return on equity for 82 electric utilities for 1993, and finds that the average of the projected median returns is 13.6 percent. Based on its analysis of historical earned returns and industry and company projections, Boston concludes that investors expect a 13.75 percent earned rate of return on common equity.[17]

Next, using an expected retention ratio, "b", of 30 percent and an expected earned rate of return on average common equity, "r", of 13.75 percent, Boston calculates an internal growth rate for the industry of 4.12 percent.[18]

Boston then estimates external growth, "sv".[19] First, Boston uses historical EEI data and Value Line projections to estimate the value of "s". Boston states that, according to the *1989 Financial Review* published by EEI, electric utility external financing was 0.85 percent of 1988 total common equity. Boston finds that the Value Line projections imply a value for "s" for the 1992–1994 period of about 0.60 percent. Boston states that utility construction programs, and, consequently, external financing, have recently been relatively low and that they may remain at low levels for the near future. However, Boston believes that in the longer term investors expect construction spending levels to revive, particularly in the wake of recently enacted clean air legislation. Based on this reasoning, Boston believes that 0.75 percent is a conservative estimate of investors' long-run expectations.[20]

Second, Boston estimates the value of the "v" component to be 0.254. This estimate is based on a Value Line 1992–1994 projection of 1.34 for the price-book ratio, which is calculated by multiplying the projected return on average equity of 13.4 percent by the projected price-earnings ratio of 10.0.[21] Thus having determined the values of "s" and "v", Boston's estimate of external growth, "sv", is 0.19 percent (0.0075 x 0.254). Total projected growth, the sum of the internal growth rate and the external growth rate, is 4.31 percent.

In addition, Boston provides another perspective by reviewing historical growth rates and near-term growth rate forecasts of earnings and dividends. Boston calculates the median 5-year and 10-year historical growth rates of earnings and dividends, using its 82-company sample.[22] Boston finds that for the ten years ending in 1989, the median dividend and earnings growth rates range from 4.3 percent to 4.7 percent. For the most recent five years the range is 3.6–3.7 percent.

Boston asserts that the most recent 5-year historic growth rates underestimate investors' expectations of future growth. Boston argues that investors do not expect the large amounts of write-offs utilities incurred in recent years to continue, and therefore investors will discount historic growth rates (particularly the 5-year growth rates) in forming their expectations concerning future industry growth. Based on this historical perspective, Boston concludes that it would be conservative to expect a growth rate in the 4.0–4.5 percent range.[23]

Boston also reviews near-term growth rate forecasts of earnings and dividends, examining forecasts made by several analysts and investment advisory services. In particular, Boston looks at: (1) Value Line's projections for earnings of 3.5 percent, and for dividends of 3.4 percent; (2) Merill Lynch's projections for earnings of 4.3 percent, and for dividends of 3.0 percent; (3) I/B/E/S's projections for earnings of 4.0 percent; and (4) Salomon Brothers' projections for earnings and dividends of 4.0 percent.[24] Boston theorizes that investors today do not put much weight on growth projections below 4.0 percent, because such a growth level would imply that the cost of common equity is not much higher than the recent cost (yield) of Baa utility bonds. It concludes that 4.0 percent is the expected near-term growth rate.[25]

Based on its analysis of historical, fundamental and projected gowth rates, Boston concludes that an appropriate growth rate for the constant growth rate DCF analysis is 4.3 percent. Boston notes that this recommendation is the same as the 4.3 percent growth rate adopted by the Commission in Order Nos. 510 and 517,[26] and states that there is independent evidence that investors, growth expectations have not changed since then. In support of this contention, Boston states that (1) According to data in the quarterly benchmark updates, dividend yields have declined by approximately 50 basis points during the four quarters ending June 1990 from June 1989 (7.91 percent to 7.43 percent); and (2) A-rated public utility bond yields have similarly declined for the year ending June 1990 from June 1989 (10.16 percent to 9.61 percent).[27] Boston believes that any change in the cost of common equity reflects changes in the general cost of money in the economy, not changes in investor growth expectations about utilities. It concludes that the declining dividend yields and the declining bond yields are a strong indication that the growth expectations for investors are about the same as they were in 1989.

b. *EEI's recommendation.* EEI's recommendation of a growth rate of 4.3 percent is also based on a combination of historical growth, fundamental analysis and analysts' projections.[28]

EEI presents fundamental analyses using both base-year data and projections. Its base-year estimate of internal growth, "br", is derived from a sample of 89 utilities for the 12 months ending in each of the four quarters from June 1989 through March 1990. The average of the median internal growth rates of each utility is 2.69 percent.[29]

EEI's estimate of external growth, "sv", is 0.088 percent. Its estimate of the "s" component, the proportion of new stock issued, during the year ending June 1990, is 0.37 percent. This estimate is the ratio of the total value of the seven new public utility common stock issues during the period to the industry average common equity for the period. EEI's estimate of the "v" component of 0.237 is derived from the median price-book ratio of 1.31 for the companies in

[16] Boston states that it has converted Value Line's figure of 13.1 percent, which represents the return on year-end equity in 1992–1994, to that of 13.4, representing the return on average equity, by utilizing the formula (2(1 + G)/(2 + G), where "G" is the growth rate in aggregate common equity). *Id.* at 15.

[17] *Id.* at 16–17.

[18] *Id.*

[19] *Id.* at 17–21.

[20] *Id.* at 19–20.

[21] The "v" component is typically computed from the following formula:

$$v = 1 - [1/(P/B)],$$

where:

P/B = Price-Book Ratio.

[22] *See* Boston Comments at appendix 7. The 10-year growth table reflects the years 1983–1989. The 5-year table covers the period from 1978 through 1989. Boston Comments at 10–11.

[23] *Id.* at 12–13.

[24] *Id.* at 2–3.

[25] *Id.* at 22–24.

[26] *See supra* note 2.

[27] Boston Comments at 24–25.

[28] EEI Attachment A at 13.

[29] *Id.* at 8. EEI estimates internal growth for each utility by multiplying a utility's retention ratio, "b", by its return on common equity, "r".

its sample of utilities. Adding EEI's base-year internal growth estimate to its external growth estimate produces an estimated base-year growth rate of 2.8 percent.[30]

EEI's projection of fundamental internal growth is 4.0 percent, and is derived from Value Line projections of retention growth for 1992–1994 and 1991–1993.[31] EEI projects external growth as 0.3 percent. Its projection of "s" is 1.2 percent, based on EEI's own estimates of industry construction expenditures and projected common stock equity balances for the period 1990–1993.[32]

EEI's projection of the "v" component, 0.254, is based on Value Line's projected price-book ratio of 1.34 for the period 1992–1994. EEI calculated "v" by multiplying the projected return on average equity of 13.4 percent by the projected price-earnings ratio of 10.0.[33]

EEI compares its base-year growth rate (2.8 percent) and projected fundamental growth rate (4.3 percent), and concludes that investors may have expectations of significant dividend growth over the base year.[34]

EEI also reviews historical data as well as projections of near-term growth rates of earnings and dividends, historical payout ratios and return on equity. It calculates the five and ten-year median growth rates of earnings and dividends for a sample of 89 utilities. For the ten years ending in 1989 the median earning and dividend growth rates were about 3.8 percent. For the five years ending in 1989 the median earning and dividend growth rates were 1.5 and 2.89 percent, respectively.[35]

EEI suggests that these historical growth rates may be poor indicators of investor expectations about future industry growth. EEI states that historical growth rates reflect the substantial negative growth rates in per share earnings and dividends experienced by some utilities during the period. EEI suggests that some of the negative growth is the result of one-time events, such as write-offs due to FASB–90 and FASB–92, and do not reflect long-term financial trends. EEI concludes that investors are unlikely to expect continued negative growth rates in the utility industry, and, therefore, caution should be exercised in using such growth rates as indicators of investors' expectations about future industry growth.[36]

EEI proceeds to recalculate five and ten-year growth rates, excluding negative growth rates in earnings and dividends. It finds ten-year growth rates of earnings and dividends of 4.63 and 4.14, and five-year growth rates of 3.97 and 3.08 percent. EEI asserts that utilizing historical data that excludes negative growth rates provides a better basis for estimating future growth rates, since, according to EEI, it is unlikely that investors expect continued negative growth.[37]

Finally, EEI reviews near-term growth rate forecasts of earnings and dividends of three analysts and investment advisory firms: (1) Value Line projects earnings of 3.5 percent, and dividends of 3.5 percent; (2) Salomon Brothers projects a five-year "normalized" growth rate for both earnings and dividends of 3.9 percent; and (3) I/B/E/S projects earnings of 3.5 percent.[38]

Based on the above analyses, EEI concludes that investors expect an average future growth rate of 4.3 percent. Noting that the Commission adopted a 4.3 percent growth rate in Order No. 517, EEI states that it believes that this rate is generally consistent with other projections and with historical growth rates.[39]

c. *Copeland's recommendation.* Copeland recommends a growth rate of 3.3 percent on the basis of historical growth, base year fundamental analysis and Value Line projections. His fundamental analysis growth rate, 3.1 percent, is based primarily on base-year values. The fundamental analysis uses a sample of 85 utilities and Value Line projections of growth in industry capital.[40]

Copeland estimates an average base-year retention ratio, "b", of 20 percent, and an average base-year return on equity, "r", of 12.7 percent. Copeland's values for "b" and "r" generate an internal growth estimate, "br", of 2.54 percent. Copeland's estimate of the "v" component, 0.24, is derived from a base-year average price-book ratio of 1.32.[41] his estimate of the "s" component relies on Value Line's projected growth in total industry capital, 2.5 percent, for the years 1990 through 1994. Copeland's values for "s" and "v" yield an external growth estimate, "sv", of 0.6 percent.[42]

Copeland's growth analysis also relies on historical and projected growth rates. He finds that average 5-year growth rates of earnings and dividends are 1.4 and 3.4 percent. Copeland recognizes, as do Boston and EEI, that historical growth rates are relevant only to the extent that investors expect them to continue into the future.[43]

Copeland then turns to projections of earnings and dividends made by Value Line for each of the 85 utilities in his sample, and finds that the average projected growth rates are 3.4 and 3.1 percent. Copeland focuses on Value Line's projections for dividend growth, comparing the 5-year historical average, 3.4 percent, to the projected average of 3.1 percent, and concludes that it is unlikely that investors expect projected growth to be greater than recent historical experience.[44]

2. Fundamental Analysis

Three commenters, Boston, EEI, and Copeland present detailed fundamental analyses. All estimate the fundamental internal growth rate, "br", through its individual components, which are the retention rate, "b", and expected earned rate of return on common equity, "r".

a. *Earnings Retention Rate ("b") Analysis.* Boston and Copeland present estimates of the earnings retention rate, "b" (1 minus the payout ratio). Boston finds that retention rates during 1989 were 25.8 percent. It also finds that: (1) During the past 10 years the retention ratio averaged about 30 percent; and (2) for half of the ten-year period the ratio was above 30 percent, and for the other half of that period it was below 30 percent.[45] Finally, Boston anticipates higher industry earned returns. Boston asserts that because there is a tendency for high retention ratios to be associated with high earned rates of return, the retention rate for electric utilities will be higher in the future than the current low level. Boston concludes that a 30 percent retention rate is appropriate.[46]

In the past four proceedings the Commission used a 30 percent projected retention rate in its calculations. As just noted, Boston's projection is 30 percent.[47] Copeland considered only recent historical data, and suggests a payout ratio of 20 percent.[48] The

[30] T3ld. at 9–11
[31] *Id.* at 9.
[32] *Id.* at 10.
[33] *Id.* at 10.
[34] *Id.* at 11.
[35] *Id.* at 3–4
[36] *Id.* at 3–5.
[37] *Id.* at 4–5.
[38] *Id.* at 11–12.
[39] *Id.* at 13.
[40] *Id.* at Copeland Comments at 2–5.
[41] The Commission's analysis indicates that Mr. Copeland's calculation of "v" is incorrect. He converted the pricebook ratio to "v" by subtracting one from the price-book ratio. The correct formula, *see supra* note 21, yields a value for "v" of 0.24.
[42] Copeland Comments at 4–5.
[43] *Id.* at 4.
[44] *Id.*
[45] Boston Comments at 15–16.
[46] *Id.* at 16.
[47] *Id.*
[48] Copeland Comments at 5.

Commission believes that investor expectations are based on more than historical data, and, therefore, the Commission would require additional analysis to support Copeland's use of historical data as the sole basis of investor expectations. The Commission concludes that the evidence supports a continuation of a long-term expected earnings retention rate of 30 percent.

b. *Expected earned rate of return on common equity ("r") analysis.* Boston's analysis of investors' expected earned rate of return on equity "r" is 13.6 percent.[49] Copeland, using a hisotrical base-year analysis, determines that the average industry return on equity is 12.7 percent.[50]

Boston examines historical and projected earned returns on equity. Its historical analysis covers the ten-year period 1980–1989. Boston analyzes two projections of earned returns. Boston's first analysis is based upon Value Line's industry composite (1992–1994), and Boston's second analysis is based upon its own sample of 89 electric companies (1993). The projected return on average equity for the composite is 13.4 percent, and the projected return for the sample is 13.6 percent. On the basis of its analyses, Boston concludes that investors expect an earned return on equity of approximately 13.75 percent.[51]

Based on its analysis, the Commission believes that 13.6 percent represents a reasonable expected earned rate of return on common equity for public utilities at this time.

Copeland found that in the recent past the industry earned returns that averaged at 12.7 percent. As previously stated, the Commission will not accept historical data as the sole basis for projecting investor expectations without additional analysis. EEI does not evaluate the components of internal growth separately, as do the other commenters. Its base-year value for the growth from retained earnings, "br", of 2.69 percent is a utility's average retention rate "b" multiplied by its earned return "r". Its projected internal growth rate of 4.0 percent is based on Value Line projections. Based on the determinations of "b" and "r" discussed above, the Commission's estimate of "br", derived from these separate estimates, is 4.08 (0.30 x 0.136).

This determination is consistent with EEI's projected internal growth rate of 4.0 percent.

c. *Proportion of new stock expected to be issued ("s") analysis.* The Commission adopts an "s" value, *i.e.*, the proportion of new stock expected to be issued, of 0.75 percent. The commenters' base-year estimates of "s" range from 0.2 percent (Copeland) [52] to 0.85 percent (EEI). EEI's near-term projection is 1.2 percent. Boston presents a long-term forecast of 0.75 percent. The variation found in the commenters' projected values of "s" reflects an underlying uncertainty about industry construction plans for the future. Several commenters suggest that such factors as the recently enacted clean air legislation will raise construction expenditures above their currently low levels.

Because the use of the constant growth model requires evaluation of estimates of long-term industry trends, the Commission is inclined to place less weight on base-year estimates, and, as the Commission did in Order No. 517, place more weight on Boston's long-term projection of "s", 0.75.

d. *Expected price of new common stock financing relative to book value ("v") analysis.* The Commission adopts a "v" value (the expected price of new common stock financing relative to its book value) of 0.248.

Three commenters (Boston, EEI and Copeland) project price-book value ratios in the narrow range of 1.31 to 1.34. The Commission finds that there is little distinction between the projections, and chooses the average 1.33 (equivalent to a "v" of 0.248). The resulting value of "sv" is 0.19 percent (0.0075×0.248).

e. *Total fundamental growth ("br+sv") analysis.* Based on the above analysis, the Commission estimates that total fundamental growth "br+sv" is 4.27 percent (0.30×0.136+0.0075×0.248).

3. Other Growth Rate Estimates

Boston, EEI and Copeland submit historical growth rates of dividends and of earnings per share. These historical growth rates vary from 1.4 percent (5-year growth of earnings per share) to 4.7 percent (10-year growth of earnings per share); the majority range between 3.4 and 4.3 percent. The Commission is reluctant to place much weight on these estimates. First, both Boston and EEI suggest that the low growth rates are due to one-time writeoffs to earnings and dividend reductions.[53] In addition, the Commission believes that historical growth rates provide only a reference point, and that further evidence is needed before they can be considered as investor expectations of the future.

Analysts' near-term forecasts vary from 3.0 to 4.3 percent.[54] This range is virtually the same as in the previous year.

4. Conclusion

It is the Commission's judgment after a review of the commenters' analyses and its own analysis developed above, that investor expectations concerning long-term growth have not appreciably changed since the last annual generic benchmark rate of return proceeding.[55] The Commission is in agreement with Boston and EEI on this point. Thus, the expected annual dividend growth rate factor of 4.3 percent remains appropriate for use in the quarterly indexing procedure for the 12 months beginning February 1, 1991. The Commission reaches this conclusion primarily on the basis of the fundamental analysis approach.

C. Flotation Costs

Utilities incur flotation costs when they sell new shares of common stock. These relatively small costs include issuance costs, which are composed of both underwriters' compensation and such out-of-pocket expenses as legal and printing fees. Flotation costs are not included elsewhere in a utility's cost of service and are therefore included in the calculation of the allowance on common equity.

The Commission continues its policy of calculating an industry average adjustment to the required rate of return in order to compensate utilities for issuance costs only. The Commission also continues its policy of estimating the adjustment to the required rate of return for flotation costs using the following formula:[56]

$$k^* = \frac{fs}{(1+s)}$$

where:

k^* = flotation cost adjustment to required rate of return

[49] Boston Comments at 16–17.

[50] Copeland Comments at 5.

[51] Boston Comments at 16–17.

[52] Copeland's projection of 2.5 percent is rejected, because it represents total capital rather than common equity. The value of "s" represents the portion of the common equity growth rate attributable to the sale of new common stock. Common equity does not normally grow at the same rate as total capital, and "s" does not normally grow at the same rate as total common equity.

[53] Boston Comments at 8–12; EEI Attachment A at 4.

[54] Boston would not place much weight on growth projections below 4.0 percent because growth at this low level would imply that the cost of common equity is "not much above" the cost of BAA utility bonds. Boston Comments at 23–24.

[55] Order No. 517, 55 FR 146 (January 3, 1990); III FERC Statutes and Regulations ¶ 30,871 (December 26, 1989).

[56] *See, e.g.*, Order Nos. 420, 442, 461, 489, 510 and 517.

f = industry average flotation cost as a percentage of offering price
s = proportion of new common equity expected to be issued annually to total common equity

Both commenters' estimates of average flotation cost as a percentage of offering price, "f", are 3.20 percent.[57] The Commission finds the analysis of EEI to include the most comprehensive set of new issues, and the Commission adopts EEI's estimated 3.20 percent value of "f" in deriving the value of the flotation cost adjustment "k*".

The Commission determined in the growth rate section above that the expected proportion of new common equity issued annually, "s", should be 0.75 percent. Applying the 3.20 percent estimate of issuance costs, "f", and the 0.75 percent estimate of new equity financing, "s", to the above formula,[58] the Commission finds the flotation cost adjustment for use in the quarterly indexing procedure to be 0.02 percent, or 2 basis points.

$$\frac{0.0320 \times 0.0075}{1.0075} = 0.0002$$

D. The Utility of the Benchmark Rate of Return

Commenters continue to express their concern with what they consider to be the mechanical nature of the Commission's generic benchmark rate of return procedures. EEI and AEP repeat recommendations made in previous annual rate of return proceedings [59] that the Commission consider abandoning the generic benchmark procedures.[60] EEI argues that despite the Commission's stated goals for the use and applicability of advisory generic rates of return, the benchmark rate of return determination remains a largely meaningless exercise.[61] AEP argues that the reasonableness of the rate of return should be judged by the reasonableness of the rate that is determined, not only the methods used, and that the return must be sufficient to maintain the credit and support the capital attraction capability of the industry and individual companies.[62]

EEI asserts that the current generic benchmark rate of return proceedings do not provide for any in-depth examination of the financial outlook for the electric utility industry, despite the widely recognized rapid and dramatic changes in the industry over the past several years.[63] EEI contends that the generic returns, if widely used, would produce unreasonable results, and would thus prove to be unworkable.[64]

EEI argues further that the single generic benchmark rate of return produced by the generic return proceedings systematically and substantially understates the appropriate average cost of common equity. EEI bases its conclusion on: (1) The exclusive dependence on the constant growth DCF model, which EEI asserts fails to adequately capture investor expectations; (2) the use of the median dividend yield rather than the arithmetic mean; and (3) the failure to distinguish properly between nominal and effective interest rates.[65]

The Commission has responded to these same arguments in prior annual generic benchmark rate of return proceedings. The commenters have not presented any new evidence or arguments to justify the Commission's changing its position. The Commission reiterates its belief that the generic benchmark rate of return provides several desirable benefits, including more accurate and consistent Commission decisions among companies and for the same company over time. The Commission continues to believe that the use of the generic benchmark rate of return broadens, its utility will become more evident.

E. Advisory Status of Generic Rate of Return

EEI repeats the recommendation it made in prior annual generic benchmark rate of return proceedings that if the Commission will not abandon the generic benchmark rate of return procedures, the benchmark rate of return should remain advisory.

In prior annual generic benchmark rate of return proceedings, the Commission considered whether it should continue to use the generic rate of return on an advisory basis or as a rebuttable presumption and decided that the generic rates will remain advisory. At this time, the generic benchmark rate of return will continue to remain advisory.

IV. Regulatory Flexibility Act Statement

The Regulatory Flexibility Act [66] requires the Commission to describe the impact that a rule will have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. Nearly all of the jurisdictional utilities that would be affected by this final rule are too large to be considered "small entities" within the meaning of the Act.[67] Accordingly, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

V. National Environmental Policy Act

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for a Commission action that may have a significant effect on the human environment.[68] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[69] The Commission has found that matters affecting rates for the purchase or sale of electricity are not major federal actions that have a significant environmental impact.[70] The

[57] Boston Comments at 26; EEI Attachment A at 14.

[58] Flotation cost adjustment =

[59] EEI Comments at 4–6; AEP Comments at 1–7.

[60] Although AEP does not specifically state that it believes the Commission should abandon the benchmark procedure, such sentiment is implicit in AEP's statement that even though the Commission did not request comments in the 1990 NOPR as to the appropriateness of the continuation of the procedure:

Nevertheless, because we believe the generic rate of return procedure as presently employed is seriously flawed, we are concerned that silence may suggest that our reservations have diminished. They have not. Indeed, one additional year's accumulated experience reinforces our prior conclusions.

AEP Comments at 3.

[61] The commenters in particular express concern that the Commission has not met its stated goal of an annual comprehensive examination of the financial condition of the electric power industry, even though "during this period, the financial risks faced by the electric utility industry have intensified as a result of new regulatory pressures, added emphasis on purchased power, prudence proceedings, environmental challenges, and even bankruptcy." EEI Comments at 2.

[62] AEP Comments at 2. More specifically, AEP states that it does not believe that such judgment can be replaced by mechanical computations, and that the experience and opinions of the people involved in the raising of capital should be given at least as much weight as the Commission's theoretical model.

[63] EEI Comments at 4–5.

[64] *Id.* at 7.

[65] *Id.* at 5–6.

[66] 5 U.S.C. 601–612 (1988).

[67] The Act defines a "small entity" as a small business, a small not-for-profit enterprise or a small governmental jurisdiction 5 U.S.C. 601(b) (1988). A "small business" is defined by reference to section 3 of the Small Business Act, as an enterprise which is "independently owned and operated" and which is not dominant in its field of operation. 15 U.S.C. 6.32(a) (1988).

[68] Regulations Implementing National Environmental Policy Act, Order No. 486, 52 FR 47,897 (December 17, 1987); III FERC Statutes and Regulations ¶ 30,783 (December 10, 1987), *codified at* 18 CFR part 380 (1990).

[69] *Id., codified* at 18 CFR 380.4 (1990).

[70] *Id., codified* at 18 CFR 380.4(a)(15) (1990).

generic benchmark rate of return is a factor considered in the determination of electric rates. Thus, no environmental assessment or environmental impact statement is necessary for the requirements of this final rule.

VI. Paperwork Reduction Act

The Paperwork Reduction Act [71] and Office of Management and Budget's (OMB's) regulations [72] require that OMB approve certain information collection requirements imposed by agency rule. The final rule in this proceeding does not impose any information collection requirement. Therefore, the Commission is not submitting this rule to OMB for review or approval.

VII. Timing of Quarterly Updates and Effective Date of Rule

The generic benchmark rates of return established through the Commission's quarterly indexing procedure will generally be published on or before the fifteenth of the month following the close of calendar quarters.

The first quarter will run from February 1 to April 30, the second quarter from May 1 to July 31, the third quarter from August 1 to October 31, and the fourth quarter from November 1 to January 31.

This rule will be effective January 25, 1991.

List of Subjects in 18 CFR Part 37

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

APPENDIX A.—PUBLIC UTILITIES USED IN QUARTERLY UPDATES

Utility	Ticker symbol	Industry code
Allegheny Power System	AYP	4911
American Electric Power	AEP	4911
Atlantic Energy Inc	ATE	4911
Baltimore Gas & Electric	BGE	4931
Black Hills Corp	BKH	4911
Boston Edison Co	BSE	4911
Carolina Power & Light	CPL	4911
Centerior Energy Corp	CX	4911
Central & South West Corp.	CSR	4911
Central Hudson Gas & Electric.	CNH	4931
Central Louisiana Electric	CNL	4911
Central Maine Power Co	CTP	4911
Central Vermont Public Service.	CV	4911
Cilcorp Inc.	CER	4931
Cincinnati Gas & Electric	CIN	4931
CIPSCO Inc	CIP	4931
CMS Energy Corp	CMS	4931
Commonwealth Edison	CWE	4911
Commonwealth Energy System.	CES	4931
Consolidated Edison of NY.	ED	4931
Delmarva Power & Light	DEW	4931
Detroit Edison Co	DTE	4911
Dominion Resources Inc	D	4931
DPL Inc	DPL	4931
DQE Inc	DQE	4911
Duke Power Co	DUK	4911
Eastern Utilities Association.	EUA	4911
Empire District Electric Co.	EDE	4911
Entergy Corp	ETR	4911
Fitchburg Gas & Electric Light.	FGE	4931
Florida Progress Corp	FPC	4911
FPL Group Inc	FPL	4911
General Public Utilities	GPU	4911
Green Mountain Power Corp.	GMP	4911
Gulf States Utilities Co	GSU	4911
Hawaiian Electric Inds	HE	4911
Houston Industries Inc	HOU	4911
I E Industries Inc	IEL	4931
Idaho Power Co	IDA	4911
Illinois Power Co	IPC	4931
Interstate Power Co	IPW	4931
Iowa Resources Inc	IOR	4911
Iowa-Illinois Gas & Electric.	IWG	4931
IPALCO Enterprises Inc	IPL	4911
Kansas City Power & Light.	KLT	4911
Kansas Gas & Electric	KGE	4911
Kansas Power & Light	KAN	4931
Kentucky Utilities Co	KU	4911
LG&E Energy Corp	LGE	4931
Long Island Lighting	LIL	4931
Maine Public Service	MAP	4911
Midwest Energy Co	MWE	4931
Minnesota Power & Light	MPL	4911
Montana Power Co	MTP	4931
Nevada Power Co	NVP	4911
New England Electric System.	NES	4911
New York State Electric & Gas.	NGE	4931
Niagara Mohawk Power	NMK	4931
Nipsco Industries Inc	NI	4931
Northeast Utilities	NU	4911
Northern States Power—MN.	NSP	4931
Northwestern Public Service Co.	NPS	4931
Ohio Edison Co	OEC	4911
Oklahoma Gas & Electric	OGE	4911
Orange & Rockland Utilities.	ORU	4931
Pacific Gas & Electric	PCG	4931
Pacificorp	PPW	4931
Pennsylvania Power & Light.	PPL	4911
Philadelphia Electric Co	PE	4931
Pinnacle West Capital	PNW	4911
Portland General Corp	PGN	4911
Potomac Electric Power	POM	4911
PSI Resources Inc	PIN	4911
Public Service Co. of Colorado.	PSR	4931
Public Service Co. of NH	PNH	4911
Public Service Co. of N Mexico.	PNM	4931
Public Service Enterprise	PEG	4931
Puget Sound Power & Light.	PSD	4911
Rochester Gas & Electric	RGS	4931
San Diego Gas & Electric	SDO	4931
Scana Corp.	SCG	4931
Scecorp	SCE	4911
Sierra Pacific Resources	SRP	4931
Southern Co	SO	4911
Southern Indiana Gas & Electric.	SIG	4931
St. Joseph Light & Power	SAJ	4931
Teco Energy Inc	TE	4911
Texas Utilities Co	TXU	4911
TNP Enterprises Inc	TNP	4911
Tucson Electric Power Co.	TEP	4911
Union Electric Co	UEP	4911
United Illuminating Co	UIL	4911
Unitil Corp	UTL	4911
Utilicorp United Inc	UCU	4931
Washington Water Power	WWP	4931
Wisconsin Energy Corp	WEC	4931
Wisconsin Public Service	WPS	4931
WPL Holdings Inc	WPH	4931

[71] 44 U.S.C. 3301–3520 (1988).

[72] 5 CFR 1320.13 (1990).

APPENDIX A.—PUBLIC UTILITIES USED IN QUARTERLY UPDATES—Continued

APPENDIX A.—PUBLIC UTILITIES USED IN QUARTERLY UPDATES—Continued

[FR Doc. 90–30553 Filed 12–31–90; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 88F–0328]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Admininstration (FDA) is amending the food additive regulations to provide for the safe use of aromatic petroleum hydrocarbon resin, hydrogenated, as a component of paper and paperboard intended for use in contact with food. This action is in response to a petition filed by Arakawa Chemical Industries, Ltd.

DATES: Effective January 2, 1991; written objections and requests for a hearing by February 1, 1991. The Director of the Office of the Federal Register approves the incorporations by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications in 21

CFR 176.170(a)(5), effective January 2, 1991.

ADDRESSES: Written objections may be sent to the Dockets Management Branch (HFA-302), Food and Drug Administration, room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center For Food Safety and Applied Nutrition (HFFR-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of October 25, 1988 (53 FR 43042), FDA announced that a food additive petition (FAP 8B4072) had been filed by Arakawa Chemical Industries, Ltd., 1-21 Hiranomachi, Higashi-Ku, Osaka 541, Japan, (current address: 3-7 Hiranomachi 1-Chome, Chuo-Ku, Osaka 541, Japan) proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of aromatic petroleum hydrocarbon resin, hydrogenated, as a component of paper and paperboard intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and is amending 21 CFR part 176.170(a)(5) as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact of 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 Docket Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before January 2, 1991 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: Secs. 201, 402, 406, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 346, 348, 376).

2. Section 176.170 is amended in paragraph (a)(5) by alphabetically adding a new entry in the table to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of substances	Limitations
* * * * *	
Aromatic petroleum hydrocarbon resin, hydrogenated (CAS Reg. No. 88526-47-0), produced by the catalytic polymerization of aromatic substituted olefins from low boiling distillates of cracked petroleum stocks with a boiling point no greater than 220 °C (428 °F), and the subsequent catalytic reduction of the resulting aromatic petroleum hydrocarbon resin. The resin meets the following specifications: softening point 85 °C (185 °F) minimum, as determined by ASTM Method E 28-67 (Reapproved 1982), "Standard Test Method for Softening Point by Ring-and-Ball Apparatus," and aniline point 70 °C (158 °F) minimum, as determined by ASTM Method D 611-82,"Standard Test Methods for Aniline Point and Mixed Aniline Point of Petroleum Products and Hydrocarbon Solvents," which are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.	For use only as modifiers in wax polymer blend coatings for paper and paperboard in contact with food of Types I, II, IV-B, VI-A, VI-B, VI-C, VII-B, and VIII identified in Table 1 of paragraph (c) of this section; and raw fruits and vegetables, iced meat, iced fish, and iced poultry; and limited to use at a level not to exceed 50 weight-percent of the coating solids under conditions of use E, F, and G identified in Table 2 of paragraph (c) of this section.
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Dated: December 18, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-30402 Filed 12-31-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 52

[T.D. 8327]

RIN 1545-AT31

Excise Tax on Chemicals That Deplete the Ozone Layer and on Products Containing Such Chemicals; Tax Imposed on Additional Chemicals

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the tax on chemicals that deplete the ozone layer and on products containing such chemicals. These temporary regulations

reflect changes to the law made by the Revenue Reconciliation Act of 1990, which imposed the tax on additional chemicals. These temporary regulations affect manufacturers and importers of ozone-depleting chemicals, and importers of products containing or manufactured with ozone-depleting chemicals. In addition, these temporary regulations affect persons, other than manufacturers and importers of ozone-depleting chemicals, holding such chemicals for sale or for use in further manufacture on January 1, 1991, and on subsequent tax-increase dates. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations for the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

EFFECTIVE DATE: These regulations are effective on January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, (202) 566–4475 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Environmental Tax Regulations (26 CFR part 52) relating to sections 4681 and 4682 of the Internal Revenue Code. Sections 4681 and 4682 were added to the Code by the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) and were amended by the Revenue Reconciliation Act of 1990 (Pub. L. 101–508). Temporary regulations relating to these sections (as originally enacted) were published in the **Federal Register** for September 6, 1990. This document amends those temporary regulations to reflect changes made by the Revenue Reconciliation Act of 1990.

Need for Temporary Regulations

Immediate guidance is needed on the tax imposed with respect to ozone-depleting chemicals. Therefore, good cause is found to dispense with the public notice requirement of 5 U.S.C. 553(b) and the delayed effective date requirement of 5 U.S.C. 553(d).

Additions to List of Ozone-Depleting Chemicals

Section 4681 imposes a tax on an ozone-depleting chemical (ODC) when the ODC is sold or used by its manufacturer or importer. That section also imposes a tax on an imported product containing or manufactured with ODCs (an imported taxable product) when the product is sold or used by its importer. The initial list of ozone-depleting chemicals included only CFC–11, CFC–12, CFC–113, CFC–114, CFC–115, Halon–1211, Halon–1301, and Halon–2402 (post–1989 ODCs). The Revenue Reconciliation Act of 1990 expanded the list of ozone-depleting chemicals by adding carbon tetrachloride, methyl chloroform, CFC–13, CFC–111, CFC–112, CFC–211, CFC–212, CFC–213, CFC–214, CFC–215, CFC–216, and CFC–217 (post–1990 ODCs). These temporary regulations reflect the addition of post–1990 ODCs to the list of taxed chemicals.

New Mixture Election Permitted in 1991

The existing regulations provide that tax is generally imposed when an ODC is first sold or used by its manufacturer or importer. However, in the case of an ODC used by its manufacturer or importer to create a mixture, the manufacturer or importer may elect to defer the tax until that mixture is sold (the mixture election). For some taxpayers, the addition of post–1990 ODCs to the list of taxed chemicals may change the preferred method of determining when the tax is imposed on ODCs used to create mixtures. Accordingly, the temporary regulations contained in this document permit a new mixture election with respect to ODCs. The election that was permitted under prior law will apply only to post–1989 ODCs, and the new election will apply only to post–1990 ODCs. These elections are made in accordance with the instructions applicable to the form on which the return of tax is made.

Imported Taxable Products

The tax on an imported product containing or manufactured with ODCs is based on the weight of the ODCs used in its manufacture (ODC weight). The existing regulations set forth an Imported Products Table that contains an exclusive list of the products subject to the tax. The Table identifies products that are subject to tax by name and Harmonized Tariff Schedule heading. In addition, Table ODC weights are provided for most products. These weights are used to compute the tax when the importer cannot determine the weight of the ODCs actually used in the product's manufacture.

The Table has not been revised to reflect the addition of post–1990 ODCs to the list of taxed chemicals, but the regulations grant the Commissioner authority to modify the Table by revenue procedure. Any changes necessary to reflect the addition of post–1990 ODCs to the list of taxed chemicals will be issued under this authority, and manufacturers and importers may request such changes by following the procedures described in the existing regulations.

Even without revision, the Table will apply to imported products containing or manufactured with post–1990 ODCs. In general, post–1990 ODCs are used in manufacturing as substitutes for post–1989 ODCs. Thus, most imported products containing or manufactured with post–1990 ODCs are listed in the current Table. If a products containing or manufactured with post–1990 ODCs is listed in the Table, the importer may compute the tax by reference to the weight (and ozone-depletion factors) of the ODCs actually used in the product's manufacture. Alternatively, the importer may use the ODC weights prescribed in the Table to compute the tax even though post–1990 ODCs (rather than the ODCs specified in the Table) are used in the product's manufacture.

A special rule applies with respect to methyl chloroform. The existing regulations provide that a product listed in the Table is not treated as an imported taxable product if only a *de minimis* amount of ODCs are used as materials in its manufacture. The *de minimis* rule is limited, however, to cases in which no ODCs were used for purposes of refrigeration or air conditioning, creating an aerosol or foam, or manufacturing electronic components. The temporary regulations provide that the use of methyl chloroform for these purposes is not subject to the limitation. Thus, a product listed in the Table may be exempt from tax under the *de minimis* rule even if the methyl chloroform used in its manufacture was used for purposes of refrigeration of air conditioning, creating an aerosol or foam, or manufacturing electronic components.

Floor Stocks Tax

Section 4682(h) imposes floor stocks taxes on January 1 of 1990, 1991, 1992, 1993, and 1994. The existing regulations provide a *de minimis* exemption from each floor stocks tax and also identify the ODCs that are taken into account in applying the exemption. Under these rules, an ODC is taken into account in applying an exemption only if the floor stocks tax would otherwise apply (*i.e.*, only if similar ODCs are subject to a rate increase under section 4681 or 4682(g) on the date the floor stocks tax is imposed). The temporary regulations contained in this document modify the *de minimis* rules to reflect the different schedules of rate increases applicable to post-1989 and post-1990 ODCs. The thresholds provided by existing regulations for the *de minimis* exemption are not increased.

In 1991, only post-1990 ODCs, Halons, and ODCs that will be used in the

manufacture of rigid foam insulation (rigid foam ODCs) are subject to a rate increase, and only those ODCs are taken into account in determining whether the *de minimis* exemption's 400-pound threshold is exceeded. In 1992 and 1993, the threshold is also 400 pounds, but different ODCs are taken into account in determining whether the threshold is exceeded. Only post-1989 ODCs (other than Halons and rigid foam ODCs) are taken into account in 1992, and all ODCs (other than Halons and rigid foam ODCs) are taken into account in 1993. In 1994, tax is imposed only on persons that hold at least 400 pounds of post-1990 ODCs (other than rigid foam ODCs), at least 200 pounds of rigid foam ODCs, or at least 20 pounds of Halons.

These regulations also modify the rules provided by existing regulations for the floor stocks tax on ODCs that have been mixed with other ingredients. Under existing regulations, no floor stocks tax is imposed on January 1st of 1991 and subsequent years on an ODC that has been mixed with any other ingredients if it is established that the other ingredients contribute to the accomplishment of the purpose for which the mixture will be used. This rule is modified so that it does not apply to an ODC that has been mixed with stabilizing or inhibiting agents and not with other ingredients. Thus, for example, methyl chloroform that has been stabilized to prevent chemical reactions during transportation or use is subject to the floor stocks tax unless it also has been mixed with other ingredients that contribute to the accomplishment of the purpose for which the mixture will be used.

Procedural Rules

The Revenue Reconciliation Act of 1990 amended the rule for payment of the floor stocks taxes imposed in 1991, 1992, 1993, and 1994. The temporary regulations contained in this document revise the rules for filing returns and payment of tax to reflect this change. They provide that floor stocks taxes for 1991, 1992, 1993, and 1994 are to be paid on or before June 30 of the year the tax is imposed and are to be reported on the return for the second calendar quarter of that year. The Act also provides that taxpayers are not required to deposit the tax imposed on post-1990 ODCs before April 1, 1991. The temporary regulations amend the rules relating to the deposit of tax to reflect this change.

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 also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking that cross-references to these regulations will be submitted to the Chief counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

List of Subjects in 26 CFR Part 52

Excise taxes, Petroleum, Chemicals.

Adoption of Amendments to the Regulations

Accordingly, title 26, part 52 of the Code of Federal Regulations is amended as follows:

Paragraph 1. The authority for part 52 continues to read in part:

Authority: 26 U.S.C. 7805 * * *.

Par. 2. Section 52.4681–OT is amended by revising the captions relating to §§ 52.4681–1T(c), 52.4682–1T(b)(2), 52.4682–3T(a), and 52.4682–4T(e) to read as set forth below:

§ 52.4681–1T Taxes imposed with respect to ozone-depleting chemicals (temporary).

* * * * *

(c) Definitions of general application
(1) Ozone-depleting chemical
(2) United States
(3) Manufacture; manufacturer
(4) Entry into United States for consumption, use, or warehousing
(5) Importer
(6) Sale
(7) Use
(8) Pound
(9) Post-1990 ODC; post-1989 ODC

* * * * *

§ 52.4682–1T Ozone-depleting chemicals (temporary).

* * * * *

(b) Taxable ODCs; taxable event * * *
(2) Taxable event
(i) In general
(ii) Mixtures
(iii) Mixture elections

* * * * *

§ 52.4682–3T Imported taxable products (temporary).

(a) Overview; references to Tables; special rule for 1990
(1) Overview
(2) References to Tables
(3) Special rule for 1990

* * * * *

§ 52.4682–4T Floor stocks tax (temporary).

* * * * *

(e) *De minimis* exemption
(1) 1990 and 1992
(2) 1991
(3) 1993
(4) 1994
(5) Examples

* * * * *

Par. 3. Section 52.4681–1T is amended by adding new paragraph (c)(9) and revising paragraph (d) to read as follows:

§ 52.4681–1T Taxes imposed with respect to ozone-depleting chemicals (temporary).

* * * * *

(c) * * *

(9) *Post-1990 ODC; post-1989 ODC.* The term "post-1990 ODC" means any ODC that is listed below Halon-2402 in the table contained in section 4682(a)(2). The term "post-1989 ODC" means any ODC other than a post-1990 ODC.

(d) *Effective date.* The regulations under sections 4681 and 4682 are effective as of January 1, 1990, and apply to—

(1) Post-1989 ODCs that the manufacturer or importer thereof first sells or uses after December 31, 1989, and post-1990 ODCs that the manufacturer or importer thereof first sells or uses after December 31, 1990;

(2) Imported taxable products that the importer thereof first sells or uses after December 31, 1989 (but, in the case of products first sold or used before January 1, 1991, by taking into account only the post-1989 ODCs used as materials in their manufacture); and

(3) Post-1989 ODCs held for sale or for use in further manufacture by any person other than the manufacturer or importer thereof on January 1, 1990, and any ODCs that are so held on January 1 of 1991, 1992, 1993, or 1994.

Par. 4. Section 52.4682–1T is amended by revising paragraph (b)(2) (ii) and (iii) to read as follows:

§ 52.4682–1T Ozone-depleting chemicals (temporary).

* * * * *

(b) * * *

(2) * * *

(ii) *Mixtures.* Except as otherwise provided in paragraph (b)(2)(iii) of this section, the creation of a mixture containing two or more ingredients is treated as a use of the ODCs contained in the mixture. Thus, except as otherwise provided in paragraph (b)(2)(iii) of this section—

(A) The tax on the post-1989 ODCs (as defined in § 52.4681–1T(c)(9)) contained in mixtures created after December 31, 1989, or on the post-1990 ODCs (as defined in § 52.4681–1T(c)(9)) contained in mixtures created after December 31,

1990, is imposed when the mixture is created and not on any subsequent sale or use of the mixture; and

(B) No tax is imposed under section 4681 on the post-1989 ODCs contained in mixtures created before January 1, 1990, or on the post-1990 ODCs contained in mixtures created before January 1, 1991.

(iii) *Mixture elections*—(A) *Permitted elections.* The only elections permitted under this paragraph (b)(2)(iii) are—

(*1*) An election for the first calendar quarter beginning after December 31, 1989, and all subsequent periods (the 1990 election); and

(*2*) An election for the first calendar quarter beginning after December 31, 1990, and all subsequent periods (the 1991 election).

(B) *In general.* A manufacturer or importer may elect to treat the sale or use of mixtures containing ODCs as the first sale or use of the ODCs contained in the mixtures. If a 1990 election is made under this paragraph (b)(2)(iii), the tax on post-1989 ODCs contained in a mixture sold or used after December 31, 1989 (including any such mixture created before January 1, 1990) is imposed on the date of such sale or use. Similarly, if a 1991 election is made under this paragraph (b)(2)(iii), the tax on post-1990 ODCs contained in a mixture sold or used after December 31, 1990 (including any such mixture created before January 1, 1991) is imposed on the date of such sale or use.

(C) *Applicability of elections.* An election under this paragraph (b)(2)(iii) applies—

(*1*) In the case of a 1990 election, to all post-1989 ODCs contained in mixtures sold or used by the manufacturer or importer after December 31, 1989 (including any such mixture created before January 1, 1990); and

(*2*) In the case of a 1991 election, to all post-1990 ODCs contained in mixtures sold or used by the manufacturer or importer after December 31, 1990 (including any such mixture created before January 1, 1991).

(D) *Making the election; revocation.* An election under this paragraph (b)(2)(iii) shall be made in accordance with the instructions for the return on which the manufacturer or importer reports liability for tax under section 4681. Except as provided in § 52.6071(a)–2T(a)(3) (relating to time for filing returns), the election may be revoked only with the consent of the Commissioner.

* * * * *

§ 52.4682–2T [Amended]

Par. 5. Section 52.4682–2T is amended by—

1. Adding the phrase "(as in effect on the date the certificate is obtained)" immediately after the words "of this section" in paragraph (b) (1)(i) and (2)(i); and

2. Revising each list of chemicals contained in a form of certificate set forth in paragraphs (d)(2) (i) and (ii) and (d)(3) (i) and (ii) to read as follows:

Product	Percentage
CFC–11	_____
CFC–12	_____
CFC–113	_____
CFC–114	_____
CFC–115	_____
Carbon tetrachloride	_____
Methyl chloroform	_____
Other (specify) _____	_____

Par. 6. Section 52.4682–3T is amended by revising the caption for paragraph (a), adding new paragraph (a)(3), and revising paragraph (b)(2)(i)(B) to read as follows:

§ 52.4682–3T Imported taxable products (temporary).

(a) *Overview; references to Tables; special rule for 1990*—(1) *Overview.*

* * *

* * * * * *

(3) *Special rule for 1990.* In the case of products first sold or used before January 1, 1991, post-1990 ODCs (as defined in § 52.4681–1T(c)(9)) shall not be taken into account in applying the rules of this section.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(B) The product is listed in Part II of the current Table, the adjusted tax with respect to the product is *de minimis* (within the meaning of paragraph (b)(2)(ii) of this section), and the ODCs (other than methyl chloroform) used as materials in the manufacture of the product were not used for purposes of refrigeration or air conditioning, creating an aerosol or foam, or manufacturing electronic components.

Par. 7. Section 52.4682–4T is amended by revising paragraph (b)(2)(i)(B), paragraph (d)(1)(ii), the first sentence of paragraph (d)(1)(iii), paragraph (d)(2)(iii), paragraph (e), and paragraph (g) to read as follows:

§ 52.4682–4T Floor stocks tax (temporary).

* * * * *

(b) * * *

(2) * * *

(i) * * *

(B) *Taxes imposed after 1990*—(*1*) *In general.* In the case of the floor stocks tax imposed on January 1 of 1991, 1992, 1993, or 1994, the tax is not imposed on an ODC that has been mixed with any other ingredients, but only if it is established that such ingredients contribute to the accomplishment of the purpose for which the mixture will be used. Thus, the tax is not imposed on the mixtures described in the examples in paragraph (b)(2)(i)(A) of this section because the ingredients mixed with the ODCs contribute to the accomplishment of the purpose for which the mixture will be used. A mixture is not exempt from tax under this paragraph (b)(2)(i)(B), however, if it contains only an ODC and an inert ingredient that does not contribute to the accomplishment of the purpose for which the mixture will be used.

(*2*) *Exception.* A mixture is not exempt from floor stocks tax under this paragraph (b)(2)(i)(B) if it contains only ODCs and one or more stabilizing or inhibiting agents.

* * * * *

(d) * * *

(1) * * *

(ii) *Initial floor stocks taxes*—(A) *Floor stocks tax imposed on post-1989 ODCs on January 1, 1990.* The floor stocks tax imposed on post-1989 ODCs (as defined in § 52.4681–1T(c)(9)) on January 1, 1990, is equal to the tentative tax amount. Thus, except as provided in paragraph (d) (2) or (3) of this section, the amount of the floor stocks tax imposed on post-1989 ODCs on January 1, 1990, is as follows:

ODC	Tax per pound
CFC–11	$1.37
CFC–12	1.37
CFC–113	1.096
CFC–114	1.37
CFC–115	0.822

(B) *Floor stocks tax imposed on post-1990 ODCs on January 1, 1991.* The floor stocks tax imposed on post-1990 ODCs (as defined in § 52.4681–1T(c)(9)) on January 1, 1991, is equal to the tentative tax amount. Thus, except as provided in paragraph (d)(2) of this section, the amount of the floor stocks tax imposed on post-1990 ODCs on January 1, 1991, is as follows:

ODC	Tax per pound
Carbon tetrachloride	$1.507
Methyl chloroform	0.137
CFC–13, –111, –112, –211, –212, –213, –214, –215, –216, and –217	1.37

(iii) *Subsequent floor stocks taxes.* The following rules apply for floor stocks taxes imposed on post-1989 ODCs after January 1, 1990, and on post-1990 ODCs after January 1, 1991. * * *

* * * * *

(2) * * *

(iii) *Post-1989 ODCs sold before January 1, 1990; post-1990 ODCs sold before January 1, 1991.* A post-1989 ODC that was sold by its manufacturer or importer before January 1, 1990, or a post-1990 ODC that was sold by its manufacturer or importer before January 1, 1991, shall be treated, for purposes of paragraphs (d)(2)(i), (d)(2)(ii) and (e) of this section, as—

(A) An ODC that was sold in a qualifying sale for purposes of § 52.4682–1T(c) if the ODC will be used as a feedstock (within the meaning of § 52.4682–1T(c)(3)); and

(B) An ODC that was sold in a qualifying sale for purposes of § 52.4682–1T(d) if the ODC will be used in the manufacture of rigid foam insulation (within the meaning of § 52.4682–1T(d) (3) and (4)).

* * * * *

(e) *De minimis exception*—(1) *1990 and 1992.* In the case of the floor stocks tax imposed on January 1 of 1990 or 1992, a person is liable for the tax only if, on the date the tax is imposed, the person holds at least 400 pounds of post-1989 ODCs that are not described in paragraph (d) (2) or (3) of this section and are otherwise subject to tax.

(2) *1991.* In the case of the floor stocks tax imposed on January 1, 1991, a person is liable for the tax only if, on such date, the person holds at least 400 pounds of ODCs subject to the 1991 floor stocks tax. For this purpose, ODCs subject to the 1991 floor stocks tax are—

(i) Post-1990 ODCs that are not described in paragraph (d)(2)(i) of this section and are otherwise subject to tax; and

(ii) Post-1989 ODCs that are described in paragraph (d) (2)(ii) or (3) of this section and are otherwise subject to tax.

(3) *1993.* In the case of the floor stocks tax imposed on January 1, 1993, a person is liable for the tax only if, on such date, the person holds at least 400 pounds of ODCs that are not described in paragraph (d) (2) or (3) of this section and are otherwise subject to tax.

(4) *1994.* In the case of the floor stocks tax imposed on January 1, 1994, a person is liable for the tax only if, on such date, the person holds—

(i) At least 400 pounds of post-1990 ODCs that are not described in paragraph (d)(2) of this section and are otherwise subject to tax;

(ii) At least 200 pounds of ODCs that are described in paragraph (d)(2)(ii) of this section and are otherwise subject to tax; or

(iii) At least 20 pounds of ODCs that are described in paragraph (d)(3) of this section and are otherwise subject to tax.

(5) *Examples.* The following examples illustrate the rules of this paragraph (e):

Example 1. On January 1, 1990, A holds 300 pounds of ODCs for sale. A is not liable for the floor stocks tax imposed on January 1, 1990.

Example 2. On January 1, 1990, B holds for sale 250 pounds of CFC–12 and 250 pounds of CFC–113. None of the ODCs are described in paragraph (d) (2) or (3) of this section. Thus, B holds at least 400 pounds of ODCs that are taken into account under paragraph (e)(1) of this section and is liable for the floor stocks tax imposed on January 1, 1990, on the ODCs held for sale.

Example 3. On January 1, 1990, C holds 200 pounds of post-1990 ODCs and 500 pounds of post-1989 ODCs. C will use 300 pounds of the post-1989 ODCs in the manufacture of rigid foam insulation (as defined in § 52.4682–1T(d) (3) and (4)). The remainder of the ODCs are not described in paragraph (d) (2) or (3) of this section. Under paragraph (e)(1) of this section, post-1990 ODCs and ODCs that will be used in the manufacture of rigid foam insulation are disregarded in determining whether the *de minimis* exemption is applicable in 1990. Thus, C holds only 200 pounds of ODCs that are taken into account under paragraph (e)(1) of this section and is not liable for the floor stocks tax imposed on January 1, 1990.

Example 4. The facts are the same as in Example 3, except that the ODCs are held on January 1, 1991. Under paragraph (e)(2) of this section, the 200 pounds of post-1990 ODCs and the 300 pounds of post-1989 ODCs that will be used in the manufacture of rigid foam insulation are taken into account in determining whether the *de minimis* exemption is applicable in 1991. The remaining 200 pounds of post-1989 ODCs are not taken into account because the base tax amount applicable to post-1989 ODCs does not increase in 1991. Nevertheless, C holds at least 400 pounds of ODCs that are taken into account under paragraph (e)(2) of this section and is liable for the floor stocks tax imposed on January 1, 1991.

* * * * *

(g) *Time for paying tax.* The floor stocks tax imposed under section 4682(h) shall be paid without assessment or notice. In the case of the floor stocks tax imposed on January 1, 1990, the tax shall be paid on or before April 1, 1990. In the case of floor stocks taxes imposed after January 1, 1990, the tax shall be paid on or before June 30 of the year in which the tax is imposed. See § 52.6151(a)–1T(b) for rules relating to paying the floor stocks tax. See § 52.6071(a)–3T for rules relating to time for filing returns of floor stocks tax.

Par. 8. Section 52.6071(a)–3T is amended by revising paragraph (b)(1) to read as follows:

§ 52.6071(a)–3T Time for filing returns under section 4682(h) (temporary).

* * * * *

(b) *Returns for floor stocks tax imposed in 1991, 1992, 1993, and 1994*—(1) *In general.* In the case of floor stocks taxes imposed under section 4682(h) on January 1 of 1991, 1992, 1993, and 1994, each return reporting the tax in accordance with § 52.6011(a)–1T shall be filed on or before August 31 of the year the tax is imposed. Each of these returns will be a return for the second calendar quarter of the year in which the tax is imposed. In the case of a person not otherwise required to file Form 720 (or other return on which the floor stocks tax is reported) the return is also a final return.

* * * * *

Par. 9. Section 52.6151(a)–1T is amended by revising paragraph (b) to read as follows:

§ 52.6151(a)–1T Time and place for paying tax shown on return (temporary).

* * * * *

(b) *Floor stocks tax imposed under section 4682(h).* The floor stocks tax imposed under section 4682(h) on January 1, 1990, shall be paid on or before April 1, 1990. The floor stocks tax imposed under section 4682(h) on January 1 of 1991, 1992, 1993, or 1994 shall be paid on or before June 30 of the year the tax is imposed. Payments shall be accompanied by Form 8109, *Federal Tax Deposit Coupon* (or any other form designated by the Commission for making deposits) and deposited in accordance with the instructions applicable to that form. In accordance with the instructions to Form 8109, mark the boxes on Form 8109 for "720" and the quarter for which the Form 720 reporting floor stocks tax is filed.

Par. 10. Section 52.6302(c)–2T is amended by revising paragraph (b)(3) to read as follows:

§ 52.6302(c)–2T Use of government depositaries under section 4681 (temporary).

* * * * *

(b) * * *

(3) *Special rules for 1990 and 1991*—(i) *Deposits relating to the first three semimonthly periods of the third calendar quarter of 1990.* The deposit of tax imposed under section 4681 for the first three semimonthly periods of the third calendar quarter of 1990 is due on or before September 27, 1990.

(ii) *Deposits relating to the first four semimonthly periods of the first*

calendar quarter of 1991. The deposit of tax imposed under section 4681 on post-1990 ODCs (as defined in § 52.4681–1T(c)(9)) for the first four semimonthly periods of the first calendar quarter of 1991 is due on or before April 1, 1991.

* * * * *

Fred T. Goldberg,

Commissioner of Internal Revenue.

Approved: December 19, 1990.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 90–30364 Filed 12–31–90; 8:45 am]

BILLING CODE 4830–01–M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF–309 RE; Notice No. 706]

RIN 1512–AA07

Establishment of Virginia's Eastern Shore Viticultural Area (88F180P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Treasury decision; final rule.

SUMMARY: This final rule establishes a viticultural area on the Virginia portion of the Delmarva Peninsula to be known as "Virginia's Eastern Shore." This final rule is based on a notice of proposed rulemaking published in the **Federal Register** on August 28, 1990, at 55 FR 35152, Notice No. 706. ATF believes the establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising will allow wineries to designate the specific grape-growing area in which the grapes used in their wines were grown and will enable consumers to better identify wines they purchase.

EFFECTIVE DATE: February 1, 1991.

FOR FURTHER INFORMATION CONTACT: Marjorie Dundas, Wine and Beer Branch, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226 (202) 566–7626.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added to title 27 a new part 9 for the listing of approved American viticultural areas. Section 4.25a(e)(1) of 27 CFR defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features, the boundaries of which have been delineated in subpart C of part 9. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition shall include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the proposed viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map(s) with the proposed boundaries prominently marked.

Petition

ATF received a petition proposing a viticultural area on the Virginia portion of the Delmarva Peninsula to be known as Virginia's Eastern Shore. The proposal was submitted by Mr. James D. Keyes, owner of the only bonded winery in the viticultural area, Accomack Vineyards, which was established in 1987. The viticultural area is located in two Virginia counties, Accomack and Northampton, with a land area of approximately 682 square miles or 436,480 acres. There are three vineyards in the viticultural area with approximately 33 acres of wine grapes.

Evidence of Name

The name Eastern Shore is used in referring to the Delmarva Peninsula, the large peninsula located along the coasts of Delaware, Maryland and Virginia. The narrow, 75-mile-long end of the peninsula which is in Virginia is bordered on the west by the Chesapeake Bay and on the east by the Atlantic Ocean. The two United States Department of Agriculture (U.S.D.A.) reports, dated 1920 and 1987, which the petitioner submitted both refer to the area as the Eastern Shore, and some of the weather data for the area was gathered at the Eastern Shore Agricultural Experiment Station, in Painter, Virginia. The area is referred to as "Virginia's Eastern Shore" in travel books, such as *Adventuring in the Chesapeake Bay Area,* by John Bowen, and *Bay & River Public Access Guide,* produced by the Public Access Task Force Committee. The *Virginia Wineries 1990–1991 Festival & Tour Guide* refers to Accomack Vineyards as "Virginia's only Eastern Shore Winery."

Boundary

The boundary follows the coastline of the southern portion of the Delmarva Peninsula, but excludes the marshy coastal areas and the coastal islands. The petitioner quoted a U.S.D.A. report which says "the mainland" (as opposed to the coastal islands and the salt marshes) "contains practically all of the cultivable, productive soils of the region."

Distinguishing Features

The petitioner provided the following evidence relating to features which distinguish the viticultural area from the surrounding areas:

Climate

The main factor which influences the climate of the viticultural area is the presence of large bodies of water on both sides of the 6-to-8-mile wide peninsula. The Atlantic Ocean to the east and Chesapeake Bay to the west provide a moderating influence on temperature within the viticultural area which is not shared by the remainder of Virginia or by the wider portion of the peninsula in Maryland and Delaware to the north. The maximum range of temperature at Wachapreague, within the viticultural area, is 95 degrees F. This may be contrasted with the maximum range of 100 degrees F. at Norfolk, VA, to the southwest of the area, and 105 degrees F. at Pocomoke City, MD, to the north of the area. The latest spring frost recorded within the viticultural area was on April 11, at Eastville, and the earliest autumn frost was recorded on October 28, in Wachapreague. Just outside the area, Norfolk, VA, has had frosts as late as April 26 in the spring and as early as October 15 in the fall, and Pocomoke City, MD, had its latest spring frost on May 25 and its earliest autumn frost on September 23. The maritime influence is also responsible for breezes which provide air circulation "desirable to minimize fungus problems with the fruit" in the humid summer. The mean annual rainfall in the area, 39.2 inches at Eastville and 37.89 inches at Wachapreague, is similar to that at Pocomoke City to the north (39.59 inches), but substantially less than at Norfolk (49.54 inches). The petitioner stated that the months of heaviest rain are July and August.

Topography

Much of the area lies between 25 and 45 feet above sea level. No point is higher than 50 feet, and the terrain is flat or gently sloping. Despite this, the area is fairly well drained by numerous creeks and streamlets, and by the porous material which underlies the soils. By contrast, the Virgina shoreline on the western side of the Chesapeake Bay rises above 50 feet rapidly, and the terrain is more irregular.

Notice of Proposed Rulemaking

On August 28, 1990, Notice No. 706 was published in the Federal Register with a 45-day comment period. In that notice, ATF requested comments regarding the proposal to establish Virginia's Eastern Shore as an American viticultural area. During the comment period, no comments were received. However, two comments which were received after the comment period both supported the establishment of Virginia's Eastern Shore as a viticultural area.

Miscellaneous

ATF does not wish to give the impression by approving "Virginia's Eastern Shore" as a viticultural area that it is approving or endorsing the quality of the wine derived from the area. ATF is approving this area as being distinct and not better than other areas. By approving this area, ATF will allow wine producers to claim a distinction on labels and in advertisements as to the origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of wines from "Virginia's Eastern Shore."

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because the final rule is not expected (1) to have secondary, or incidental effects on a substantial number of small entities, or (2) to impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291 because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have 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.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Marjorie Dundas, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par 2. The Table of Sections in subpart C is amended to add the title of § 9.135 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

§ 9.135 Virginia's Eastern Shore

* * * * *

Par 3. Subpart C is amended by adding § 9.135 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.135 Virginia's Eastern Shore.

(a) *Name.* The name of the viticultural area described in this section is "Virginia's Eastern Shore."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the "Virginia's Eastern Shore" viticultural area are 3 U.S.G.S. Quadrangle (1:250,000 Series) maps. They are titled:

(1) Eastville, VA.; N.C.; MD., 1946 (revised 1969).

(2) Salisbury, MD.; DEL.; N.J.; VA., 1946 (revised 1969).

(3) Richmond VA.; MD., 1973.

(c) *Boundary.* The Virginia's Eastern Shore viticultural area is located in Accomack and Northampton counties, Virginia. The boundary is as follows:

(1) The beginning point is the intersection of the Virginia/Maryland border and Chincoteague Bay, near Greenbackville on the Salisbury, MD., U.S.G.S. map;

(2) From the beginning point, the boundary follows the coastline in a southwesterly direction. Where there are marshes indicated on the U.S.G.S. maps, the boundry is the inland side of these marshes;

(3) When the boundary reaches the southernmost point of the peninsula, on the Eastville, VA., U.S.G.S. map, the boundary turns and proceeds in a northwesterly direction, again following the coastline around Cherrystone Inlet on the Richmond, VA., U.S.G.S. map;

(4) The boundary continues to follow the coastline and the inland side of any marshes indicated on the U.S.G.S. maps in a northeasterly direction, until it reaches the Virginia/Maryland border on the Eastville, VA., U.S.G.S. map;

(5) The boundary then follows the Virginia/Maryland border back to the beginning point at Chincoteague Bay on the Salisbury, MD., U.S.G.S. map.

Signed: December 10, 1990.

Stephen E. Higgins,

Director.

Approved: December 17, 1990.

Dennis M. O'Connell,

Acting, Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 90–30548 Filed 12–31–90; 8:45 am]

BILLING CODE 4810–31–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 280

[FRL–3895–1]

Underground Storage Tanks; Technical Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today publishing an interim final rule amending the technical requirements for underground storage tanks (USTs) promulgated in the Federal Register on September 23, 1988 (53 FR 37082). Specifically, EPA is extending for 270 days (or until September 22, 1991)

the time frame UST owners and operators have to install automatic line leak detectors on new or existing underground pressurized piping systems *without* the minimum performance of this detection equipment having to meet the 40 CFR 280.43(a)(3) requirements for a probability of detection of 0.95 and a probability of false alarm of 0.05. Under today's modification, owners and operators are still required to (1) equip all pressurized piping with an automatic line leak detector and (2) have either an annual line tightness test conducted, or begin conducting monthly monitoring, by December 22, 1990. Also, all automatic line leak detectors are still required to detect leak rates of 3 gallons per hour (gph) at 10 pounds per square inch (psi) within 1 hour as contained in § 280.44(a), but the associated probabilities of detection and false alarm in § 280.43(a)(3) are being delayed until September 22, 1991, for automatic line leak detectors only.

EFFECTIVE DATE: The amendment to 40 CFR part 280 contained in this rulemaking published today is effective January 2, 1991.

ADDRESSES: The Docket for this rulemaking (Docket No. UST 2–1) is located at the U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC, 20460. The Docket is open from 9:30 a.m. to 3:30 p.m., Monday through Friday, except for federal holidays. You may make an appointment to review materials in the Docket by calling (202) 475–9720.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424–9346 (toll free) or 382–3000 (in Washington, DC).

SUPPLEMENTARY INFORMATION:

I. Background

On September 23, 1988, (53 FR 37082) EPA promulgated technical requirements under subtitle I of RCRA for underground storage tanks containing petroleum or substances defined as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), except for substances regulated as a hazardous waste under subtitle C of the Resource Conservation and Recovery Act (RCRA). These rules went into effect 90 days later on December 22, 1988. The effect of today's document is to delay for 270 days (or until September 22, 1991) the requirement in § 280.40(a)(3) for owners and operators to install automatic line leak detectors on pressurized piping that detect the specified leak rate (under the specified conditions) *with* a probability of detection (Pd) of 0.95 and a probability of false alarm (Pfa) of 0.05.

Section 280.40(a)(3) in the final rule specifies that all leak detection methods used after December 22, 1990—except for those permanently installed prior to that date—have to be capable of detecting the leak rate or quantity specified for that method with a Pd of 0.95 and a Pfa of 0.05. This requirement applies to automatic line leak detectors, among other methods. EPA stated in the September 23, 1988, preamble to the final rule (53 FR 37145), that the Agency intended to give the various manufacturers time to evaluate their methods to prove they meet the standards in the rule. EPA also explained that the Agency was in the process of developing several different procedures for testing the different release detection methods in order to help manufacturers evaluate their equipment in an objective and technically sound fashion.

EPA has since published, over the last 8 months, a series of seven guidance documents entitled *Standard Test Procedures for Evaluating Leak Detection Methods.* The series includes standards for particular release detection methods specified in the September 23, 1988, rule (53 FR 37082). Most of these procedures were published in final form early in the summer of 1990, and the last procedure, "Pipeline Leak detection Systems," was published in late September of 1990. Most parties interested in obtaining a copy of this last protocol probably did not receive it until October 1990. As a result, a relatively short time period was allowed for piping leak detector manufacturers to receive the final protocol and make the necessary arrangements for evaluating the performance of their methods.

Over the past two months, the Agency has received comments from the leak detection industry, including comments from the nation's long-time major manufacturer of automatic pressurized line leak detection equipment, regarding the inadequate amount of time available to carry out the EPA protocol evaluation for piping given the late-September release of the final pipeline leak detection systems protocol and the December 22, 1990, regulatory deadline for owners and operators to demonstrate Pd and Pfa for new equipment. This commenter further requested more time to test its equipment and to carry out the protocol in this area. Some commenters also raised several technical concerns about the protocol itself that they believe may require EPA technical revision.

The above situation raises the serious concern that some major manufacturers of automatic line leak detectors will not be able to complete their evaluation under the EPA piping protocols (or another acceptable procedure) by December 22, 1990, when the Pd/Pfa requirements for automatic line leak detectors are scheduled to come into effect under § 280.40(a)(3). This may force some key manufacturers through no apparent fault of their own to withdraw, at least temporarily, a major portion of the currently available detectors from the market place. EPA is concerned with such a potentially significant short fall in the availability of equipment (even if only for a few months) that UST owners and operators could purchase to comply with EPA's pressurized line leak detection requirements. Such a result could cause widespread non-compliance problems as well as unintended detrimental impacts to the environment and public health. As was discussed in the preamble to the final rule (53 FR 37153), the Agency considers the use of automatic line leak detectors to be a key part of our regulatory strategy for avoiding catastrophic releases from pressurized piping leaks. The Agency has received no new information that indicates currently available devices are not discovering, and therefore resulting in the curtailment of, significant pressurized line leaks.

Today's interim final rule is necessary to overcome the above implementation difficulties. By delaying for 270 days the effective date of the 0.95 Pd/0.05 Pfa standards as they apply to automatic line leak detectors, UST owners and operators can continue to install those mechanical line leak detectors for pressurized piping which are most widely available and currently being used extensively in the industry. EPA has been encouraging the use of these devices for the past two years. This temporary action also represents a significant benefit in terms of protecting human health and the environment since these leak detection devices will continue to be used uninterrupted and the catastrophic-type releases they are designed to detect will continue to be detected. Today's action is intended to allow manufacturers sufficient time to complete their equipment evaluations that have been delayed by the late release of the EPA protocol. They will also be able to make manufacturing adjustments (if necessary) before the Pd and Pfa for automatic line leak detectors become effective. Finally, the 270-day delay gives EPA the time it needs to

consider the technical comments it has received about the protocol.

Until the probabilities become effective for automatic line leak detectors (September 22, 1991), these devices need only detect the leak rate of 3 gph as specified in § 280.44(a). Automatic line leak detectors installed prior to September 22, 1991, will not have to be replaced after the probabilities become effective, but all those installed after that period of time will have to achieve the probability standards.

It is important to note that delaying the Pd and Pfa performance criteria for automatic line leak detectors to September 22, 1991, in no way changes the requirement that all new and existing underground piping that conveys regulated substances under pressure be equipped with an automatic line leak detector and either have an annual line tightness test conducted or have applicable monthly monitoring conducted. It is also important to note that the delay in Pd and Pfa is only for the automatic line leak detector requirements for pressurized piping. The Pd and Pfa associated with all other leak detection methods (e.g., tank tightness testing, automatic tank gauging and line tightness testing) will become effective December 22, 1990, as mandated in § 280.40(a)(3) of the regulations, and for the reasons discussed in the original September 23, 1988, **Federal Register** (53 FR 37082).

II. Need for Interim Final Rule

EPA is not soliciting comments prior to the effective date of today's rulemaking. Under section 3(b) of the Administrative Procedures Act, 5 U.S.C. 553(b), the Agency may for good cause omit notice and comment procedures. The Agency believes it has good cause to omit notice and comment procedures. When EPA developed the phase-in schedule of compliance for the Pd and Pfa, the Agency believed that the development of the protocols for testing, evaluating and reporting on the performance of the different methods of leak detection and the accompanying evaluation by manufacturers and/or third parties would be complete 24 months from promulgation of the final technical requirements. However, because of unforeseen delays in getting the final piping protocol completed, as was previously explained in this preamble discussion, unintended non-compliance with an essential requirement (automatic line leak detection) would result without today's interim final amendment to delay the compliance date in the rules for 270 days. EPA believes, therefore, that providing notice and comment on this amendment is impractical and contrary to public interest.

The Agency is, however, soliciting comments on today's regulatory amendments. Comments may be submitted on or before February 1, 1991.

Comments will be considered by the Agency and, if necessary, the Agency will issue a revised final rule changing today's amendment to respond to these comments.

III. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. Since this document is merely an amendment to an existing regulation delaying one compliance date, the rule is not "major" as contained in the Office of Management and Budget's Interim Regulatory Impact Analysis Guidance.

This document was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Dated: December 21, 1990.

William K. Reilly,

Administrator.

List of Subjects in 40 CFR Part 280

Hazardous substances, Insurance, Oil pollution, Surety bonds, Water pollution, Water supply.

For the reasons set out in this document, part 280 of title 40, Code of Federal Regulations, is amended as set forth below.

PART 280—TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS (UST)

1. The authority citation for part 280 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991, 6991(a), 6991(b), 6991(c), 6991(d), 6991(e), 6991(f), 0991(h).

2. Section 280.40 is amended by revising paragraph (a)(3) to read as follows:

§ 280.40 General requirements for all UST systems.

(a) * * *

(3) Meets the performance requirements in § 280.43 or 280.44, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, methods used after the date shown in the following table corresponding with the specified method except for methods permanently installed prior to that date, must be capable of detecting the leak rate or quantity specified for that method in the corresponding section of the rule (also shown in the table) with a probability of detection (Pd) of 0.95 and a probability of false alarm (Pfa) of 0.05.

Method	Section	Date after which Pd/Pfa must be demonstrated
Manual Tank Gauging.	280.43(b)	December 22, 1990.
Tank Tightness Testing.	280.43(c)	December 22, 1990.
Automatic Tank Gauging.	280.43(d)	December 22, 1990.
Automatic Line Leak Detectors.	280.44(a)	September 22, 1991.
Line Tightness Testing.	280.44(b)	December 22, 1990.

* * * * *

[FR Doc. 90-30595 Filed 12-31-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket 80-286; FCC 90J-1]

Common Carrier Services; Allocation of Costs Between the State and Interstate Jurisdictions

AGENCY: Federal Communications Commission; Federal-State Joint Board.

ACTION: Final rule; recommended decision and order.

SUMMARY: The Joint Board recommended a revision of § 36.621 of the Commission's Rules. This section specifies the procedures used by the National Exchange Carrier Association to calculate study area unseparated loop costs for the purpose of determining the level of the Universal Service Fund. The recommended change would substitute gross investment for net investment as the basis for allocating Operating Taxes and Corporate Operations Expenses between the loop and nonloop operations of local exchange carriers.

EFFECTIVE DATE: December 17, 1990.

FOR FURTHER INFORMATION CONTACT: Charles Needy, Accounting and Audits Division, Common Carrier Bureau, (202) 632-7500.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal-State Joint Board's *Recommended Decision and Order* CC Docket No. 80–286, FCC90J–1, adopted November 15, 1990, and released December 17, 1990.

The full text of Joint Board recommended decisions are 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 recommended decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Summary of Recommended Decision and Order

Section 36.621 of the Commission's Rules prescribes the procedures that the National Exchange Carrier Association (NECA) uses to calculate unseparated loop costs, in individual study areas of local exchange carriers, for the purpose of determining the level of the Universal Service Fund. To ensure that loop-related overhead costs and taxes are properly included in this calculation, the rules require NECA to include a portion of unseparated Corporate Operations Expenses and Operating Taxes. The rules specify that NECA is to allocate these overhead costs and taxes between loop and nonloop operations based on the loop/nonloop apportionment of net investment.

Since March 4, 1988, however, NECA had based this allocation, under waiver, on gross investment rather than net investment. To determine whether this change should be made permanent, the Commission released a Notice of Proposed Rulemaking on November 22, 1988, 53 FR 49575, December 8, 1988, proposing to amend these rules, inviting comment and referring the matter to the Docket 80–286 Joint Board for a recommendation. Specifically, the Commission proposed a bifurcated approach under which the allocation of Corporate Operations Expenses would be based on gross investment but that of Operating Taxes would be based on net investment.

On November 15, 1990, the Joint Board adopted recommendations regarding these allocation procedures. It recommended that this Commission amend the rules to prescribe the use of gross investment as the basis of allocation for both Corporate Operations Expenses and Operating Taxes, as NECA had been doing under waiver. The Joint Board noted that all but one commenting party favored this approach. The Joint Board determined that the allocation of Corporate Operations Expenses better reflects cost causation when based on gross investment rather than net investment. It also determined that the substitution of net investment for gross investment as the basis of allocation for taxes would have only a minimal effect on the overall amount of USF support. It therefore concluded that any marginal improvement in precision that might result from using the bifurcated approach proposed by the Commission would be too small to warrant the added complexity of such an approach.

Ordering Clause

25. Accordingly, this Joint Board *recommend*, That the Federal Communications Commission adopt the proposal presented herein and the suggested revisions of part 36 of the Commission's rules contained below. This recommendation is adopted pursuant to sections 4 (i) and (j), 201–205, 221(c) and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i) and (j), 201–205, 221(c) and 410.

List of Subjects in 47 CFR Part 36

Communications common carriers, Jurisdictional separation procedures, Telephone, Uniform system of accounts.

Rule Changes

Part 26 of title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 36 continues to read:

Authority: 47 U.S.C. 151, 154 (i) and (j), 205, 221(c), 403 and 410.

2. The title of subpart F is recommended to be revised to read as follows:

Subpart F—Universal Service Fund

3. Section 36.601 is amended by revising paragraph (a) to read as follows:

§ 36.601 General.

(a) The Universal Service Fund is derived from an expense adjustment that shall be computed in accordance with this subpart F. This adjustment shall be added to interstate expenses and deducted from state expenses after expenses and taxes have been apportioned pursuant to subpart D.

* * * * *

4. Section 36.621 is amended by revising the section heading and paragraphs (a) introductory text and (a)(4) to read as follows:

§ 36.621 Study area total unseparated loop cost.

(a) For the purpose of calculating the expense adjustment, the study area total unseparated loop cost equals the sum of the following:

* * * * *

(4) Corporate Operations Expenses, Operating Taxes and the benefits and rent portions of operating expenses, as reported in § 36.611(a)(5) attributable to investment in C&WF Category 1.3 and COE Catetory 4.13. To calculate the amount of these expenses and taxes that is attributable to exchange operations, multiply the total amount of such costs by the ratio of the unseparated gross exchange plant investment in C&WF Category 1.3 and COE Category 4.13, as reported in § 36.611(a)(1), to the unseparated gross telecommunications plant investment, as reported in § 36.6119(a)(6).

5. The section heading § 36.622 is revised to read as follows:

§ 36.622 National and study area average unseparated loop costs.

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–30611 Filed 12–31–90; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 97

[PR Docket No. 90–55; FCC 90–414]

Establishment of a Codeless Class of Amateur Operator License

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the Amateur Service Rules to create a codeless class of amateur radio operator license. The rules are necessary in order to offer an entry level amateur service operator license to otherwise qualified individuals who find the telegraphy requirement a barrier to pursuing the purpose of the amateur service. The effect of the rule amendments is to make the amateur service more accessible to such individuals.

EFFECTIVE DATE: February 14, 1991.

FOR FURTHER INFORMATION CONTACT: William T. Cross, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted December 13, 1990,

and released December 27, 1990. The complete text of this Commission action, including the rule amendments, is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street NW., Washington, DC. The complete text of this Report and Order, including the rule amendments, may also 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 Report and Order

1. The Amateur Service Rules have been amended to delete the telegraphy examination element that an individual currently must pass in order to qualify for a Technician Class amateur operator license. The revised examination elements do not include a telegraphy element, thereby allowing individuals who do not know the international Morse code to qualify for this class of amateur operator license. The Commission did not revise the number of questions that an individual must pass to qualify for the Technician Class amateur operator license, finding instead that the existing examination elements were adequate to determine if an individual was qualified to exercise the privileges of the Technician Class operator license.

2. The Commission decided that the privileges of the revised Technician Class operator license would be all amateur privileges above 30 MHz, as allowed by international Radio Regulations No. 2735. The Commission also decided to retain the Novice Class operator license in its present form. No revisions were made to the examination requirements or privileges for any other class of amateur operator license and the Commission amended its rules to grandfather frequency privileges below 30 MHz for holders of Technician Class licenses issued before February 14, 1991.

3. The Commission noted that the passing of a telegraphy examination is not an indication of an examinee's good character, high intelligence, cooperative demeanor, or willingness to comply with its rules. Rather, the Commission found that the passing of a telegraphy examination is no more and no less than proof of an examinee's ability to send and receive texts in Morse code at some specified rate.

4. With respect to whether Technician Class licensees should be required to use a two-letter station identification suffix to distinguish Technician Class control operators who have passed a telegraphy examination from Technician Class control operators who have not passed a telegraphy examination, the Commission found that any need to distinguish between these control operators was subordinate to the need for an efficient identification procedure. The Commission, therefore, did not adopt its proposal but did editorially revise its rules to clarify the station identification procedure.

5. The amended rules are set forth at the end of this document.

6. The action taken herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520, and found not to impose a new or modified information collection requirement on the public.

7. The amended rules are issued under the authority of 47 U.S.C. 154(i) and 303 (c) and (r).

List of Subjects in 47 CFR Part 97

Amateur Radio, Licensing requirements, Operator licenses, Volunteers.

Donna R. Searcy,

Secretary.

Amended Rules

Part 97 of chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609, unless otherwise noted.

2. Section 97.119(e) is revised to read as follows:

§ 97.119 Station identification.

* * * * *

(e) When the control operator is a person who is exercising the rights and privileges authorized by § 97.9(b) of this part, an indicator must be included after the call sign as follows:

(1) For a control operator who has requested a license modification from Novice Class to Technical Class: KT;

(2) For a control operator who has requested a license modification from Novice or Technical Class to General Class: AG;

(3) For a control operator who has requested a license modification from Novice, Technician, or General Class operator to Advanced Class: AA; or

(4) For a control operator who has requested a license modification from Novice, Technician, General, or Advanced Class operator to Amateur Extra Class: AE.

* * * * *

3. Section 97.301(e) is amended by revising the introductory text preceding the table to read as follows:

§ 97.301 Authorized frequency bands.

(e) For a station having a control operator holding a Novice Class operator license, or a Technician Class operator license plus a CSCE indicating that the person passed element 1(A), 1(B), or 1(C), or a Technician Class operator license issued before February 14, 1991:

* * * * *

4. Section 97-501 is amended by revising the introductory text and paragraph (d) to read as follows:

§ 97.501 Qualifying for an amateur operator license.

An applicant must pass an examination for the issuance of a new amateur operator license and for each change in operator class. Each applicant for the class of operator license specified below must pass, or otherwise receive examination credit for, the following examination elements:

* * * * *

(d) Technician Class operator: Elements 2 and 3(A).

* * * * *

[FR Doc. 90-30613 Filed 12-31-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 97

[PR Docket No. 90-356; FCC 90-413]

Amendment of the Amateur Radio Service Rules to Make the Service More Accessible to Persons With Handicaps

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the Amateur Service Rules to exempt severely handicapped individuals from the higher speed telegraphy examinations. The rules are necessary in order to accommodate severely handicapped individuals who are incapable of passing such examinations. The effect of the rule amendments is to make the amateur service more accessible to such individuals. This Report and Order also affirms the action taken by the Commission's Private Radio Bureau denying The American Radio Relay League's request for an extension of time within which to file comments in the proceeding.

EFFECTIVE DATE: February 14, 1991.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted December 13, 1990, and released December 27, 1990. The complete text of this Commission action, including the role amendments, is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street NW., Washington, DC. The complete text of this Report and Order, including the rule amendments, may also 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 Report and Order

1. The Amateur Service Rules have been amended to exempt from the higher speed telegraphy examinations persons who, because of severe handicaps, are incapable of passing those examinations. The administering volunteer examiners (VEs) must give credit for the higher speeds to any examinee who holds an amateur operator license indicating that the person has already passed a telegraphy examination of 5 or 13 words per minute (wpm). In addition, the examinee must submit a licensee application (Form 610) containing a physician's certification stating that because the examinee is an individual with a severe handicap, the examinee is unable to pass a 13 or 20 wpm telegraphy examination. The examinee must also submit a release permitting disclosure to the Commission of medical information pertaining to the handicap.

2. The Commission did not specify a list of disabilities. The Commission said that it would rely on the judgment and integrity of the physician to establish that the person is severely handicapped and incapable of passing the telegraphy examination. The Commission also said that the term "physician" would be limited to practitioners with full medical privileges, that is, doctors of osteopathy or doctors of medicine.

3. The Commission noted that the VEs use special accommodative procedures to administer telegraphy examinations to handicapped persons. It also noted that the international Radio Regulations are silent concerning sending speed and accommodative procedures for handicapped persons. The Commission said that the special accommodative procedures will usually show that the examinees know the Morse code, even though at a slower speed. Where warranted, the VEs will substitute a sending test for a receiving test. Although an examinee's sending ability usually exceeds the receiving ability, passing a sending test is proof that the examinee knows the Morse code.

4. With respect to whether VEs should administer examinations that they had not passed, the Commission said that a VE who cannot receive the Morse code at 20 wpm is not competent to administer a 20 wpm sending test because the VE cannot receive the message sent by the examinee. That VE, however, might be competent to administer a 20 wpm receiving test where the message is sent by a tape player and the content of the message is known by the VE. Any VE who is not competent to perform the VE functions required for any particular examination should not administer that examination.

5. The Commission affirmed the Private Radio Bureau's denial of The American Radio Relay League's request for an extension of time to file comments in the proceeding. In so doing, the Commission said that ample time had been allowed for respondents to file comments, and that more than one hundred had done so, including volunteer examiner coordinators (VECs) and VEs.

6. The amended rules are set forth at the end of this document.

7. The action taken herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501–3520, and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

8. The amended rules are issued under the authority of 47 U.S.C. 154(i) and 303(1) (l) and (r).

9. List of Subjects in 47 CFR Part 97

Amateur radio, Examination, Handicapped applicants, Volunteers.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Amended Rules

Part 97 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. Section 97.3 is amended by redesignating paragraphs (a)(29) through (a)(40) as (a)(30) through (a)(41) and adding a new paragraph (a)(29) to read as follows:

§ 97.3 Definitions.

(a) * * *

(29) *Physician.* For the purpose of this part, a person who is licensed to practice in a place where the amateur service is regulated by the FCC, as either a Doctor of Medicine (M.D.) or a Doctor of Osteophathy (D.O.)

* * * * *

3. Section 97.505 is amended by adding paragraph (a)(5) to read as follows:

§ 97.505 Element credit.

(a) * * *

(5) A current, or expired but within the grace period for renewal, Novice, Technician plus a CSCE indicating that the person passed element 1(A) or 1(B), Technician issued before February 14, 1991, General, or Advanced Class operator license, and a Form 610 containing:

(i) A physician's certification stating that because the person is an individual with a severe handicap, the person is unable to pass a 13 or 20 words per minute telegraphy examination; and

(ii) A release signed by the person permitting disclosure to the FCC of medical information pertaining to the person's handicap: Element 1(C).

* * * * *

4. Section 97.511 is amended by revising paragraph (f) to read as follows:

§ 97.511 Technician, General, Advanced and Amateur Extra Class operator license examination.

* * * * *

(f) Within 10 days of the administration of a successful examination for the Technician, General, Advanced or Amateur Extra Class operator license, the administering VEs must submit the application to the coordinating VEC. If telegraphy element credit is claimed under § 97.505(a)(5), the physician's certification and the patient's release on the license application, Form 610, must be completed.

[FR Doc. 90–30612 Filed 12–31–90; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 91046-0006]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Notice of closure rescission, notice of apportionment of reserves; request for comments.

SUMMARY: NOAA announces that the remaining total allowable catch (TAC) for pollock in the Aleutian Islands subarea (AI) is more than sufficient to provide for bycatch in other fisheries and is allowing further directed fishing for pollock by U.S. vessels in domestic annual processing (DAP) operations in that subarea. NOAA further announces that the remainder of the reserve is needed for DAP pollock in the Bearing Sea subarea. These actions are necessary to promote optimum use of groundfish in the Bering Sea and Aleutian Islands (BSAI) and to conduct orderly management of resources. They are intended to carry out the management objectives contained in the Fishery Management Plan for Bering Sea/Aleutian Islands Groundfish (FMP).

DATES: This notice is effective from noon, Alaska local time (A.l.t.), December 27, 1990, until midnight, A.l.t., December 31, 1990. Comments are invited for 15 days following the effective date of this notice.

ADDRESSES: Comments should be mailed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, or be delivered to the Federal Building Annex, Suite 6, 9109 Mendenhall Mall Road, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrett, Resource Management Specialist, NMFS, 907-586-7229.

SUPPLEMENTARY INFORMATION: The FMP governs the groundfish fishery in the exclusive economic zone within the BASI under the Magnuson Fishery Conservation and Management Act. The FMP was developed by the North Pacific Fishery Management Council and was implemented by regulations appearing at 50 CFR 611.93 and part 675.

Rescission of closure

The initial 1990 TAC specification for AI pollock was determined under 50 CFR 675.20(a)(2) and set at 85,000 metric tons (mt), all of which was apportioned to domestic annual processing (DAP) (55 FR 1434, January 16, 1990). Under § 675.20(a)(8), this fishery was closed to directed fishing on November 14, 1990 (55 FR 48109, November 19, 1990). Declining catch-per-unit-effort in the days immediately preceding the closure resulted in a remainder of pollock TAC in the AI that exceeds the amount necessary to support remaining groundfish fisheries in that subarea as incidental catch. The Secretary of Commerce is rescinding the previously issued notice of closure and allowing directed fishing for pollock in the AI by vessels in DAP operations.

Apportionment of reserve

The current domestic annual harvest (DAH) for pollock in the Bering Sea subarea is 1,310,751 mt; however, during the fishing year, amounts in excess of the DAH have been harvested. Therefore, under § 675.20(b)(1)(i), all remaining reserve, 8,288 mt, is apportioned to the TAC for pollock in the Bering Sea subarea and results in a new TAC for pollock in the Bering Sea subarea of 1,319,039 mt. This increase is allocated to DAP and results in a new DAP of 1,296,288 mt (Table 1). This apportionment does not result in allowable retention of pollock in the Bering Sea subarea and does not result in overfishing pollock stocks in the Bering Sea subarea because the revised TAC is less than the acceptable biological catch (ABC) amount.

TABLE 1.—BERING SEA/ALEUTIAN ISLANDS APPORTIONMENT OF TAC

[Values are in metric tons]

		Current	This action	Revised
Pollock (BS):				
TAC = 1,319,039	DAP	1,288,000	+8,288	1,296,288
ABC = 1,450,000	JVP	22,751	0	22,751
Total (TAC = 2,000,000	DAP	1,733,720	+8,288	1,742,008
	JVP	257,992	0	257,992
	Reserve	8,288	−8,288	0

Classification

This action is taken under § 675.20(a)(8) and (b)(1)(i) and is in compliance 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 or to delay the effective date of this notice. Immediate effectiveness of this notice is necessary to benefit U.S. fishermen who wish to participate in DAP pollock operations in the AI who would otherwise be prohibited from fishing due to a premature fishery closure. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Recordkeeping and reporting requirements.

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

Dated: December 26, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-30563 Filed 12-26-90; 5:10 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 1
Wednesday, January 2, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Docket No. FV-91-230]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order 932 for the 1991 fiscal year (January through December) established for that order. The proposal is needed for the California Olive Committee (committee) to incur operating expenses during the 1991 fiscal year and to collect funds during that year to pay those expenses. This would facilitate program operations. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by January 14, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2530–S, Washington, DC 20090–6456, telephone (202) 475–3862.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 932 (17 CFR part 932) regulating the handling of olives grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

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

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

There are approximately six handlers of California olives regulated under this marketing order each season and approximately 1,350 olive producers in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. Most, but not all, of the olive producers and none of the olive handlers may be classified as small entities.

The California olive marketing order, administered by the Department requires that the assessment rate for a particular fiscal year shall apply to all assessable olives received by regulated handlers from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The members of the committee are olive producers and handlers. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

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

The committee met on December 4, 1990, and unanimously recommended 1991 fiscal year expenditures of $2,115,975 and an assessment rate of $20.23 per ton of assessable olives received by handlers under M.O. 932. In comparison, 1990 fiscal year budgeted expenditures were $2,073,440 and the assessment rate was $20.68 per ton.

Major expenditure items budgeted for the 1991 fiscal year compared with those budgeted in 1990 (in parentheses) are $354,975 ($337,540) for program administration, $126,000 ($94,500) for production research, $830,000 ($790,000) for consumer advertising, $632,000 ($667,000) for food service advertising, and $173,000 ($170,250) for public relations. The $42,535 increase in budgeted expenditures from 1990 is mainly attributed to increases in production research and increased administrative costs.

Estimated assessment income of $2,116,058 for the 1991 fiscal period based on handler receipts of 104,600 tons of assessable olives during the 1990–91 crop year (August–July) will be utilized to cover the proposed expenses. Last year's assessment income was approximately $2,068,000 based on receipts of 100,000 assessable tons. The committee's reserve is well within the maximum amount authorized under the order.

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

have a significant economic impact on a substantial number of small entities.

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

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

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

PART 932—OLIVES GROWN IN CALIFORNIA

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

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

2. New § 932.225 is added to read as follows:

§ 932.225 Expenses and assessment rate.

Expenses of $2,115,975 by the California Olive Committee are authorized, and an assessment rate of $20.23 per ton of assessable olives is established, for the fiscal year ending on December 31, 1991. Unexpended funds from the 1990 fiscal year may be carried over as a reserve.

Dated: December 26, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–30557 Filed 12–31–90; 8:45 am]

BILLING CODE 3410–02–M

Rural Electrification Administration

7 CFR Part 1700

Public Information and Public Comments to Proposed Rules

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend 7 CFR part 1700 by revising § 1700.30 to update policies on public information and collection of public comments to proposed rules. This rule is intended to (1) assist that Agency in its efforts to modernize and streamline Agency policies and procedures for the purpose of facilitating an efficient system for information that directly affects REA borrowers and others and (2) to assist the Agency in responding to comments received from the public on proposed rules published in the **Federal Register**. The new regulation will benefit both the public and the Agency. Pursuant to 7 CFR part 1610 the provisions of this regulation also apply to the Rural Telephone Bank (RTB).

DATES: Written comments must be received by REA or bear a postmark or equivalent no later than March 4, 1991.

ADDRESSES: Submit written comments to Mr. Curtis L. Bryant, Director, Administrative Services Division, Rural Electrification Administration, room 0165, South Building, U.S. Department of Agriculture, Washington, DC 20250. REA requests an original and three copies of all comments.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Bryant, Director, Administrative Services Division, Rural Electrification Administration, room 0165, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382–8940.

SUPPLEMENTARY INFORMATION: This regulation will be issued in conformance with Executive Order 12291, Federal Regulation. It will not (1) have an annual effect on the economy of $100 million or more; or (2) result in a major increase in costs or prices for consumers, individuals, industries, Federal, state, or local government agencies or geographic regions; or (3) result in significant adverse effects on competition, employment, or productivity. Therefore, this rule has been determined to be non-major.

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that the promulgation of this proposed rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.* (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment. This program is listed in the statement or an environmental assessment. This program is listed in the Catalog of Federal Domestic Assistance under No. 10.850, Rural Electrification Loans and Loan Guarantees; 10.851, Rural Telephone Loans and Loan Guarantees; 10.852, Rural Telephone Bank Loans; and 10.853, Rural Economic Development Loans and Grants.

For the reasons set forth in the final rule related notice to 7 CFR part 3015, subpart V (50 FR 47034), this program is excluded from the scope of Executive Order 12373 regarding intergovernmental consultation with State and local officials.

According to the Regulations of the Office of Management and Budget (OMB), 5 CFR 1320.7(j)(4), "Facts or opinions submitted in response to general solicitations of comments from the public, published in the **Federal Register**" are not generally considered information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Therefore, this rule contains no reporting or recordkeeping provisions requiring OMB approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Background

Pursuant to the Rural Electrification Act of 1936 (49 Stat. 1363; 7 U.S.C. 901 *et seq.*) (the RE Act), as amended, the Rural Electrification Administration (REA) issues from time to time notices and regulations in the **Federal Register** as well as bulletins, informational publications, and instructions to staff in order to (1) implement the provisions of the RE Act and the loan and security instruments; (2) establish Agency procedures; and (3) assist electric and telephone borrowers in the operation, design, and maintenance of their systems. Historically many Agency policies and procedures have been contained in bulletins and manuals.

Several years ago, REA began the process of codifying material that was found in REA Bulletins, thereby choosing the Code of Federal Regulations (CFR) and the Daily **Federal Register** (FR) as its primary vehicle for the issuance of policies and procedures now and in the future. Because the CFR is becoming the primary document on which the public and borrowers will rely, the original concept of Bulletins and other Agency publications is changing. Bulletins directed to borrowers in the future will not contain the types of policy issues they had previously. Additionally, the codification in the CFR of material now found in Bulletins will allow the Agency to rescind many Bulletins as obsolete or duplicative. This will eventually mean fewer Bulletins directed to borrowers.

The Agency now has a policy of distributing final Bulletins to borrowers and others interested in the program. Over the years it has become difficult to maintain lists of, or to identify, non REA borrowers who may or may not have some interest. With the changing nature of Bulletins and choosing the CFR as the vehicle to communicate policy to the public, it is no longer necessary to maintain mailing lists of non REA

borrowers for this purpose. With its wider availability, the **Federal Register** allows better public access to Agency information in a more timely manner.

REA will continue to make available indexes of Agency publications in conformance with the Freedom of Information Act, 5. U.S.C. 552(a)(2). The Agency proposes to make single copies of individual bulletins and informational publications available to borrowers and other members of the public either directly from REA, or from another source to be established by REA. Every effort will continue to be made to keep costs to both the government and the public as low as possible. The Agency does not plan to charge REA borrowers for bulletins directed to them. Information about availability and cost of any REA publication may be obtained from the Publications and Directives Management Branch, Administrative Services Division, Rural Electrification Administration, room 0180, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382–9551. REA publications are not copyright protected, and they may be reproduced.

To assist REA in responding to information requests submitted in response to proposed rules and to make copies of these comments available to the public in a convenient and timely fashion, while minimizing costs to the government, REA is proposing to require a signed original and three copies of all comments. Charges to persons wishing to receive copies of comments to proposed rules will be established in conformance with 7 CFR part 1, appendix A.

List of Subjects in 7 CFR Part 170

Loan programs—energy; Loan programs—communications; Publications—distribution.

For the reasons stated above, REA proposes to amend 7 CFR part 1700 as follows:

1. The authority citation for part 1700 continues to read as follows:

Authority: 7 U.S.C. 901–950(b); title I, subtitle D, section 1403, Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72; 7 U.S.C. 1921 et seq., and 44 FR 30313, May 25, 1979; 5 U.S.C. 301, 552; 7 CFR 1.1–1.16.

2. Section 1700.30 is revised to read as follows:

§ 1700.30 Availability of agency publications and other information, and collection of public comments to proposed rules.

(a) 5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying.

(b) The Rural Electrification Administration (REA) issues from time to time notices and regulations in the **Federal Register** as well as bulletins, informational publications, and staff instructions in order to:

(1) Implement the provisions of the RE Act and the loan and security instruments;

(2) Establish Agency procedures; and;

(3) Assist electric and telephone borrowers in the design, operation, and maintenance of their systems.

(c) Information about availability and costs of Agency publications and other Agency materials is available from Publications and Directives Management Branch, Administrative Services Division, Rural Electrification Administration, room 0180, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500.

(d) REA will provide for the distribution of indexes of publications in conformance with the Freedom of Information Act, 5 U.S.C. 552(a)(2). Single copies of individual bulletins, informational publications, staff instructions, and forms, including forms of basic loan and security instruments, are available to borrowers and other members of the public either directly from REA, from the Superintendent of Documents, U.S. Government Printing Office, or from another source to be established by REA. Costs for these publications are established in conformance with 7 CFR part 1. Bulletins directed to REA borrowers are provided at no cost to those borrowers.

(e) REA requires that all persons submitting comments to a proposed rule published by the Agency submit a signed original and three copies of their comments to the address shown in the preamble to the proposed rule. Copies of comments submitted are available to the public in conformance with 7 CFR part 1.

Dated: December 7, 1990.

Gary C. Byrne,

Administrator.

[FR Doc. 90–30560 Filed 12–31–90; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–NM–267–AD]

Airworthiness Directives; Gulfstream Aerospace Corporation Model G–1159 (G–II) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain Gulfstream Model G–1159 (G–II) series airplanes, which currently requires an inspection to detect cracks or corrosion in the wing structure in the area of Fuselage Station (FS) 452 inboard clothespin attachment fitting, and repair, if necessary. This action would require repetitive inspections to detect corrosion or cracks in the forward and aft wing attach fittings at FS 345 and 452, respectively, and adjacent wing beam and wing plank areas, and repair, if necessary; and the application of corrosion protection treatment. This proposal is prompted by a review of the inspection reports submitted in response to the existing AD. This condition, if not corrected, could result in significantly reduced structural integrity of the wing/fuselage attachment joint, and the inability to carry flight or ground loads.

DATES: Comments must be received no later than February 14, 1991.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 90–NM–267–AD, 1601 Lind Avenue, SW., Renton, Washington 98055. The applicable service information may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–9980. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta Georgia.

FOR FURTHER INFORMATION CONTACT: Steve Flanagan, Airframe Branch, ACE–120A; telephone (404) 991–2910. Mailing Address: FAA, Central Region, Atlanta Aircraft Certification Office 1669

Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules docket for examination by interested persons. A report summarizing each FAA/public contract, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90–NM–267–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On July 6, 1990, the FAA issued AD 90–13–02, Amendment 39–6660 (55 FR 29008, July 17, 1990), applicable to certain Gulfstream Model G–1159 (G–II) series airplanes, to require an inspection to detect cracks or corrosion in the wing structure in the area of Fuselage Station (FS) 452 inboard clothespin attachment fitting, and repair, if necessary. That action was prompted by reports of extensive corrosion and cracks in the wing structure in the area of FS 452 inboard clothespin attachment fitting. Extensive corrosion in this area, if not corrected, could result in significantly reduced structural integrity of the wing.

Since issuance of that AD, Gulfstream has analyzed the inspection results required by the existing AD; has developed procedures for repetitive visual, X-ray, and ultrasonic inspections to detect cracks or corrosion, which are tailored to the particular structural details of the airplanes affected by that AD; and has developed appropriate procedures for repair and corrosion protection of these airplanes.

The FAA has reviewed and approved the following:

(1) Gulfstream II Customer Bulletin No. 393, Amendment 2, dated October 26, 1990, which describes procedures for visual, ultrasonic, and X-ray inspections of the forward and aft wing/fuselage attach fittings at FS 345 and FS 452, respectively, and adjacent wing beam and wing plank structure to detect pitting, exfoliation, corrosion, or cracks; and procedures for repair, if necessary.

(2) Gulfstream II and IIB Aircraft Service Change (ASC) No. 422, dated August 23, 1990, which describes procedures to add inspection access holes to enable a boroscope inspection of the aft-inboard clothespin attachment fitting at FS 452. The additional access created by this ASC will facilitate accomplishment of the inspections required by Customer Bulletin No. 393 and the Maintenance Manual Interim Revision 45–1 (see below).

(3) Gulfstream II and IIB Aircraft Service Change No. 423, dated August 23, 1990, which describes procedures to repair the corrosion damage.

Gulfstream II Maintenance Manual, Volume 1, Interim Revision 45–1, dated August 24, 1990, describes procedures to perform an inspection to detect corrosion damage to the foam filled clothespin attach fitting, and repair, if necessary; and procedures to apply corrosion protection treatment.

Since this condition is likely to exist or develop on other airplanes of this same type design, and AD is proposed which would supersede AD 90–13–02 with a new airworthiness directive that would require repetitive visual, ultrasonic, and X-ray inspections to detect corrosion or cracks in the forward and aft wing fuselage attach fittings at FS 345 and FS 452, respectively, and adjacent wing beam and wing plank structure; repair, if necessary; and the application of corrosion protection treatment; in accordance with the Gulfstream documents previously described.

There are approximately 207 Model G–1159 (G–II) series airplanes of the affected design in the worldwide fleet. It is estimated that 52 airplanes of U.S. registry would be affected by this AD, that it would take approximately 175 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $364,000.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39 [AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39–6660 (55 FR 29008, July 17, 1990), AD 90–13–02, with the following new airworthiness directive:

Gulfstream Aerospace Corporation

Applies to Model G–1159 (G–II) series airplanes, Serial Numbers 001 through 065, excluding Model G–IIB and Serial Number 062, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural integrity of the wing/fuselage attach joint, accomplish the following:

A. Within 60 days after the effective date of this AD, perform a visual inspection to confirm the presence of foam in the aft inboard wing/fuselage clothespin attach fittings in accordance with paragraph 1.A., "Action Required," of Gulfstream Aerospace Customer Bulletin No. 393, Amendment 2, dated October 26, 1990.

Note: Accomplishment of the modification described in Gulfstream Aerospace Aircraft Service Change (ASC) No. 422, dated August 23, 1990, will allow adequate inspection access to confirm the presence of foam in the aft inboard wing attach fittings.

1. If a determination is made that either attach fitting is a foam-filled fitting, perform a wing/fuselage de-mate; an inspection of the forward and aft wing/fuselage attach fittings and adjacent structure in accordance with Gulfstream Aerospace Customer Bulletin No. 393, Amendment 2, dated October 26, 1990.

Note: Gulfstream Aerospace Customer Bulletin No. 393, Amendment 2, dated October 26, 1990, references Gulfstream Aerospace Customer Bulletin No. 393, dated August 16, 1990, for procedural information.

2. If a determination is made that either attach fitting is not a foam-filled aft fitting, perform visual, ultrasonic, and radiographic inspections of the attach fittings, wing planks, and wing beams in accordance with Gulfstream Aerospace Customer Bulletin No. 393, Amendment 2, dated October 26, 1990.

B. Within 18 months following the inspection required by paragraph A, of this AD, and thereafter at intervals not to exceed 18 months, perform detailed visual, ultrasonic, and X-ray inspections to detect corrosion or cracks in the inboard wing to fuselage attachment at the wing rear beam at FS 452, in accordance with Gulfstream II Maintenance Manual, Volume 1, Interim Revision 45–1, dated August 24, 1990 (pages 617 through 622, Section 51–1–0; and page 205, Section 57–0).

C. Prior to further flight after accomplishing the inspections required by paragraphs A, and B, of this AD, apply corrosion protection treatment in accordance with Gulfstream Maintenance Manual Interim Revision 45–1, Volume 1, dated August 24, 1990.

D. If cracks or corrosion are found as a result of the inspections required by paragraphs A, and B, of this AD, repair prior to further flight and apply corrosion protection treatment in accordance with Gulfstream Aerospace ASC No. 423, dated August 23, 1990.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Central Region.

Note: The request should be submitted directly to the Manager, Atlanta ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager Atlanta ACO.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Gulfstream Aerospace Corporation, P.O. Box 2206, M/D D–10, Savannah, Georgia 31402–9980. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia.

Issued in Renton, Washington, on December 13, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–30588 Filed 12–31–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 90–ASW–36]

Proposed Revision of Control Zone: Amarillo, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the control zone located at Amarillo, TX. The current control zone description includes references to the old name of the airport, that being the Amarillo AFB/Air Terminal. Additionally, the runway number used in the description changed and the coordinates of the airport have been corrected. The need to correct the revised runway number, airport coordinates, and the airport name has made this revision necessary. The intended effect of this proposal would revise the control zone located at Amarillo, TX, to ensure adequate controlled airspace to contain instrument operations at the Amarillo International Airport.

DATES: Comments must be received on or before February 1, 1990.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 90–ASW–36, 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, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Mark F. Kennedy, System Management Branch, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193–0530; telephone: (817) 624–5561.

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, 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. 90–ASW–36." 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 Office of the Assistant Chief counsel, 4400 Blue Mound Road, Fort Worth, TX, 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 Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193–0530. 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 § 71.171 of the Federal Aviation Regulations (14 CFR part 71) to revise the control zone located at Amarillo, TX. The current description of the Amarillo, TX, Control Zone includes the old name of the airport, Amarillo AFB/Air Terminal. The name of the airport is the Amarillo International Airport. Also, the runway number used in the control zone description has been changed because of a change in the magnetic variation of record for the airport; the airport coordinates have also been corrected. These changes have necessitated this proposed revision. The intended effect of this proposal is to revise the control zone located at Amarillo, TX, to ensure adequate controlled airspace to contain instrument operations at the Amarillo International Airport.

Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

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, Control zones.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA 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.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Amarillo, TX [Revised]

Within a 5-mile radius of the Amarillo International Airport (latitude 35°13'10"N., longitude 101°42'20"W.); within 2 miles each side of the Amarillo VORTAC 220° radial, extending from the 5-mile radius zone to the VORTAC; within 2 miles each side of the extended centerline of Runway 22, extending from the 5-mile radius zone to 4.5 miles southwest of the departure end of Runway 22.

Issued in Forth Worth, TX, on December 10, 1990.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 90-30589 Filed 12-31-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[PS-94-90]

RIN 1545-AP24

Retail Excise Taxes on Certain Luxury Items

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a notice of proposed rulemaking relating to the retailers excise taxes on certain passenger vehicles, boats, aircraft, jewelry, and furs under sections 4001, 4002, 4003, 4006, and 4007 of the Internal Revenue Code as enacted by section 11221 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508, 103 Stat. 1388).

DATES: Written comments and requests for a public hearing must be received by March 4, 1991.

ADDRESSES: Send written comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, room 4429, attn: CC:CORP:T:R (PS-94-90), Washington, DC 20044. In the alternative, comments and requests may be hand delivered to: CC:CORP:T:R (PS-94-90), Internal Revenue Service, room 4429, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Edward B. Madden, Jr., 202-566-4077 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed Manufacturers and Retailers Excise Tax Regulations (26 CFR part 48) relating to retail excise taxes on certain luxury items under subchapter A of chapter 31 of the Internal Revenue Code of 1986, as amended ("Code"). These taxes were added to the Code by the Revenue Reconciliation Act of 1990.

Explanation of Provisions

The proposed regulations would provide taxpayers with rules for complying with the taxes imposed by sections 4001, 4002, 4003, 4006, and 4007 of the Code.

Passenger Vehicles

Section 4001 of the Code and § 48.4001-1 of the proposed regulations impose a tax on the first retail sale of certain passenger vehicles to the extent that the sales price of a vehicle exceeds $30,000. The tax is limited to sales of automobiles having an unloaded (or "curb") weight of 6,000 pounds or less, to trucks and vans having a (loaded) gross vehicle weight of 6,000 pounds or less, and to limousines without regard to weight. The proposed regulations provide an exemption from the tax for sales of passenger vehicles for use exclusively (except for an incidental or *de minimis* use) in the trade or business of transporting persons or property for compensation or hire. A vehicle that is leased or rented without a driver is not being used in the trade or business of transporting persons or property for hire.

Boats

Section 4002 of the Code and § 48.4002-1 of the proposed regulations impose a tax on the first retail sale of any boat to the extent that the sales price of a boat exceeds $100,000. The proposed regulations define the term "boat" as a waterborne vessel of any size or configuration, propelled by engine, motor, or sail, and capable of carrying one or more persons. The proposed regulations provide exemptions from the tax for sales of boats for use exclusively (except for an incidental or *de minimis* use) in the active conduct of a trade or business of commercial fishing or of transporting

persons or property for compensation or hire, or for use in any other trade or business provided the boat is not used predominantly in any activity that is generally considered entertainment, amusement, or recreation. The phrase "entertainment, amusement, or recreation" has the meaning given that phrase in section 274. The limitation on entertainment, amusement, or recreation does not apply to vessels used exclusively in a trade or business of transporting persons or property for hire (including sightseeing boats, cruise ships, and any captained charter).

Aircraft

Section 4003 of the Code and § 48.4003–1 of the proposed regulations impose a tax on the first retail sale of aircraft to the extent that the sales price of an aircraft exceeds $250,000. Under the proposed regulations, an "aircraft" is any airborne vessel propelled by an engine or motor and capable of carrying one or more persons. The proposed regulations provide exceptions from the tax for aircraft sold for use exclusively (except for an incidental or *de minimis* use) in (1) the application of fertilizer, (2) certain mining, oil and gas production, or forestry activities, (3) the trade or business of providing flight training, or (4) the trade or business of transporting persons or property for compensation or hire. A separate exemption from the tax applies to the sale of an aircraft if 80 percent of the use of the aircraft will be in any trade or business. Under this exception, the purchaser must provide proof of business use for the first two taxable years ending after the aircraft is placed in service. If the purchaser fails to provide proof of business use, the full tax, plus interest, is imposed on the purchaser and depreciation deductions with respect to the aircraft may be lost. The proposed regulations make the 80 percent business use exemption available to a person who purchases an aircraft that qualifies for one of the four exclusive use exceptions; the purchaser may elect to apply the 80 percent business use exception instead of the exclusive use exception.

All Taxable Vehicles

Section 4004 of the Code sets forth two exemptions and two limitations that apply to all passenger vehicles, boats, and aircraft.

Under Code section 4404(a) and § 48.4004–2 of the proposed regulations, an exemption is provided for vehicles sold to the Federal Government, a state or local government, or the District of Columbia for use exclusively in police, fire fighting, search and rescue, or other law enforcement or public safety activities or in public works activities. The proposed regulations clarify that the governmental use exemption will not apply to the sale of a taxable vehicle for the transportation (or personal use) of a government executive. A separate exemption covers vehicles sold to any person for use exclusively in providing emergency medical services.

Section 4004(b) of the Code and § 48.4004–3 of the proposed regulations provide an anti-abuse rule (the subsequent additions tax) to prevent avoidance of the tax on vehicles through separate purchases of parts and accessories. The addition of parts or accessories to a taxable vehicle (determined without regard to price) within 6 months of the date on which the taxable vehicle is placed in service is subject to tax. The subsequent additions tax is equal to the lesser of 10 percent of the sales price of the part or accessory and its installation or 10 percent of the adjusted price of the taxable vehicle. The subsequent additions tax does not apply to replacement parts or minor parts. Under the proposed regulations, a part is a replacement part only if it is of the same style, quality, purpose and appearance as the part it replaces. Parts are minor parts if the aggregate price of all parts installed on the vehicle does not exceed $200. Under Code section 4004(b), the installer is secondarily liable for the subsequent additions tax. The proposed regulations allow installers to discharge that secondary liability by collecting and paying over the proper amount of tax (if any) to the Internal Revenue Service.

Section 4004(c) of the Code and § 48.4004–4 of the proposed regulations provide a second anti-abuse rule (the exemption recapture tax) to prevent persons from purchasing a taxable vehicle for an exempt use and, after using it for a short time, selling it to a nonexempt user or converting it to a nonexempt use. Under the proposed regulations, the exemption recapture tax is imposed if (1) no tax is imposed on the first retail sale of an vehicle by reason of an exemption provided under section 4001, 4002, 4003, or 4004 and (2) within 2 years there is a nonexempt resale, re-lease, or a substantial nonexempt use of the vehicle. The exemption recapture tax equals 10% of the amount by which the fair market value of the vehicle (at the time of the nonexempt resale, re-lease, or use) exceeds the applicable luxury tax threshold amount. Under the proposed regulations, a substantial nonexempt use is any use (other than an incidental use or a *de minimis* use outside of the exempt activity) that is not an exempt use under subchapter A of chapter 31.

Jewelry and Furs

Sections 4006 and 4007 of the Code impose taxes on the first retail sale of jewelry and furs, respectively, to the extent that the sales price of an item of jewelry or a fur exceeds $10,000. Under § 48.4006–1 of the proposed regulations, the term "jewelry" means any article designed to be worn on the person or apparel for the purpose of adornment, regardless of the substance of which it is made and without reference to its utilitarian value or purpose. Under § 48.4007–1 of the proposed regulations, the term "fur" means an article of clothing made of fur on the hide or pelt of an animal, or an article of clothing of which fur is a major component. The term "fur" does not include leather. Fur is a major component of an article if it constitutes more than 25 percent of the surface area of the article (both exterior and lining) or 35 percent of the cost of raw materials comprising the article.

The proposed regulations provide that if, in the course of a trade or business, a person produces an article of jewelry or fur for the use of a customer from material provided by the customer, the delivery of the article to the customer is considered a first retail sale of that article for a price equal to the fair market retail value of the article at the time of delivery. Under the regulations, repairs and slight modifications to an article of jewelry or fur that do not alter the style, quality, purpose or appearance of the article are not treated as production.

Rules Applicable to All Taxable Articles

Additional Exemptions

Proposed regulation § 48.4011–2 provides additional exemptions that apply to all taxable articles. The exemption provided for taxable articles that are sold for export generally follows the rules of § 48.4221–3 of the Manufacturers and Retailers Excise Tax Regulations. Those regulations require the seller to obtain proof of exportation within 6 months from the date of sale. For jewelry and furs, the proposed regulations provide a special rule that the proof of exportation requirement is considered satisfied if the seller relies in good faith on a certification by the purchaser that the article will be exported within 6 months, and the seller verifies that the purchaser has a current foreign passport and a ticket to leave the United States within 6 months.

Proposed regulation § 48.4011–2 also provides that no tax will be imposed on

a sale, lease or use of an imported taxable article that was previously taxed or that was sold, leased, or used prior to January 1, 1991. The seller is responsible for proving that the article was previously taxed or sold, leased, or used prior to January 1, 1991. The proposed regulation contains an anti-abuse rule under which the exemption for items used before January 1, 1991, does not apply to articles used before that date in an attempt to avoid imposition of luxury tax on a later sale, lease, or use.

The luxury tax is generally imposed on the first sale, lease or use of an imported article (like an automobile imported by an individual for personal use), even if the article is a used article. See § 48.4011–5 of the proposed regulations. Under § 48.4011–2 of the proposed regulations, however, no tax is imposed on any imported taxable article that was used outside the United States prior to January 1, 1991.

First Retail Sale

Under § 48.4011–3 of the proposed regulations, the term "first retail sale" means the first sale, for a purpose other than resale, after manufacture, production, or importation. A sale is considered a retail sale unless the article is intended for use in the manufacture of another taxable article, is intended to be leased or rented, or is intended to be resold. A seller may rely in good faith on a certification by the purchaser that the sale is not a retail sale.

Proposed regulation § 48.4011–3 also includes the definition of importation, as well as special rules for the treatment of articles that are imported temporarily into the United States, leased, or sold by auctioneers. The proposed regulations provide that the seller can claim a refund of the luxury tax if a sale is rescinded. A lease or use of a luxury article cannot be rescinded.

Sales Price

Under section 4011(d) of the Code and § 48.4011–4 of the proposed regulations, the sales price upon which the luxury tax is based includes the total consideration paid for the article. The price includes any charge incident to placing the article in a condition ready for use, such as transportation, insurance, and delivery. Other than the luxury tax itself, and State or local sales taxes stated as a separate charge, the price includes most Federal or State taxes that are imposed on the article or components of the article. The price also includes the cost of any parts and accessories sold on or in connection with the article, and the cost of any other goods or services that the purchaser is required to buy in order to purchase and use the article. The cost of extended warranty contracts that the purchaser is not required to buy, and State title, registration and license fees, are not included in the price. The sales price is reduced by the amount of any rebate or price adjustment that is paid to the purchaser, but is not reduced by the trade-in value of any property that is transferred from the purchaser to the seller.

Special pricing rules are provided for situations where articles are sold at less than an arm's length retail price, and for grossing-up to retail levels the price at which manufacturers or importers sell articles. Section 4011(d)(2) of the Code requires the addition of a presumed retail markup retail percentage to the price at which a sale (other than a sale for resale) is made by a manufacturer or importer. The purpose of the presumed markup percentage is to protect against erosion of the luxury tax base by converting an actual (nonretail) sales price to a constructive retail sales price upon which to base the tax. The proposed regulations contain presumed markup percentages of 7.5 for passenger vehicles, 4 percent for boats and aircraft, and 15 percent for jewelry and furs. The Internal Revenue Service solicits public comment on the suitability of these presumed markup percentages.

Use Tax

Under Code section 4011(b) and § 48.4011–5 of the proposed regulations, the use of an article before there has been a first retail sale is taxed as if the article was sold for its fair market retail value. Under the proposed regulations, no tax is imposed on the use of a taxable article for purposes of displaying or preparing the article for sale, provided there is no more than a *de minimis* element of personal benefit or business utility other than in connection with displaying or preparing the article for sale. Displaying or preparing an article for sale includes exhibiting the article in a place where it is being shown for sale; promoting the sale of an article by allowing its use at a public event; and transporting a vehicle, under its own power, to a place where it will be exhibited for sale or where it will be serviced or inspected prior to sale

No use tax is imposed, under the proposed regulations, on the use of a passenger vehicle as a demonstrator while a prospective customer is in the vehicle, or on test driving any passenger vehicle, boat or aircraft in order to establish that the vehicle is operating properly or to familiarize customers or employees with the operation of the vehicle. Any trip that involves transporting persons or property to a destination other than the point of origin is not a test drive.

The proposed regulations also provide safe harbors for the use of passenger vehicles, boats, and aircraft by dealers. A dealer is never liable for use tax on a passenger vehicle that has been driven less than 200 miles; on a power boat with less than 100 hours of engine time; on a sail boat with under 100 nautical miles; or on an aircraft with less than 30 hours of flight time. If the total use of the vehicle exceeds the appropriate safe harbor, the dealer is permitted to extend the safe harbor by proving to the Commissioner that the excess is attributable to uses that do not trigger the use tax.

Tax on Leases and Installment Sales

The lease of an article is treated as a sale of the article, and the lessor is treated as the seller. See §§ 48.4011–3 and 48.0–2(a)(7) of the proposed regulations. Thus, for example, no tax is imposed on a lease for an exempt use. If, however, the lessee releases the article for a nonexempt use, or makes a substantial nonexempt use of the article, tax will be imposed on the fair market value of the article at the time of the release or nonexempt use. See § 48.4011–5.

Code section 4011(c) and § 48.4011–6 provide special rules for the payment of luxury tax on a qualified lease. A qualified lease is any lease of a boat or aircraft, and any lease of passenger vehicle for at least one year.

Under the proposed regulations, the lessor may elect to have the total luxury tax on a qualified lease imposed at the beginning of the lease term. The general rule, however, is that the tax is imposed as lease payments are actually received from the lessee. If a qualified lease is canceled, sold, or otherwise terminated before the total tax has been paid, the balance of the total tax is imposed upon the termination of the lease. The total tax on a lease equals the luxury tax that would have been imposed if, at the beginning of the lease term, the lessor has sold the vehicle for the lease price. The lease price equals the lowest price for which the vehicle is sold by retailers in the ordinary course of trade. The proposed regulations provide three bases for determining the lowest retail price of a vehicle: (1) The lessor/retailer's lowest established retail price, (2) the actual or presumptive retail price paid by the lessor for the vehicles, or (3) the gross capitalized cost that the lessor

uses to compute the lessee's lease payments.

Rules similar to the qualified lease rules are provided for installment sales, conditional sales, and chattel mortgage arrangements.

Nonqualified leases (such as short-term automobile rentals) are generally taxed in one of two ways. If the article is purchased by the lessor for leasing in a nonqualified lease, then the luxury tax is paid by the person who sells the vehicle to the lessor. If the article is sold to the lessor for resale or for lease in a qualified lease, but the first lease of the article is a nonqualified lease, then the total luxury tax is paid by the lessor at the beginning of the lease term.

Rules Governing Exemption Certificates

Although no seller is required by the proposed regulations to secure an exemption certificate, sellers may wish to rely on exemption certificates from purchasers to establish that a particular transaction is not subject to luxury tax under one of the definitions, exemptions, exclusions or exceptions in the proposed regulations or to help establish the amount of luxury tax imposed on a particular transaction.

Proposed regulation § 48.4011–7 sets forth general guidelines for preparing such exemption certificates. A certificate should be in writing, should be signed by the purchaser, and should be secured by the seller prior to or at the time of the sale. Where a buyer and seller engage in many similar transactions, it may be appropriate to secure a continuing certificate that will cover all transactions between the parties for a period of up of three years. A certificate is not required to be a separate document, and can be included in a contract of sale, lease agreement, or in an agreement between a seller and its authorized wholesalers, retailers, or franchisees. If a seller currently has an agreement with its dealers or franchisees that represents that all of the articles purchased by the dealer or franchisee are being purchased for resale or leasing in qualified leases, the seller may rely on that agreement as a resale certificate with respect to articles sold through January 31, 1991. For sales after January 31, 1991, sellers should be able to secure appropriate certificates from purchasers.

The proposed regulations provide that a person may only rely on a certificate if it is accepted from the customer in good faith. If a seller, at the time of the transaction, has reason to believe that the article sold to the purchaser may not satisfy the applicable definition, exemption, exclusion or exception, the seller is not considered to have accepted the certificate in good faith.

The Internal Revenue Service anticipates issuing more detailed guidance about the possible forms that certificates might take, and solicits public about this aspect of the proposed regulations.

Effective Date and Miscellaneous Issues

Proposed regulation § 48.4011–8 provides that the luxury tax will apply to sales or uses occurring after December 31, 1990, and sets forth rules with respect to incomplete articles purchased before January 1, 1991, an exception for binding contracts in effect on September 30, 1990, and a rule for certain exchanges.

Payment of Tax for First Quarter of 1991

The rules for paying and depositing tax and for filing returns of tax are contained in the regulations under 26 CFR Part 40. Under those rules, no deposit of luxury excise tax is required to be made for the period January 1, 1991, through March 31, 1991. Instead, the tax liability for that period is to be paid with the taxpayer's excise tax return for that quarter.

Special Analyses

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

Comments and Requests for a Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be scheduled and held upon written request by any person who submits written comments on the proposed rules. Notice of the time and place for the hearings will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Edward B. Madden, Jr., Office of Assistant Chief Counsel (Passthroughs & Special Industries), Internal Revenue Service. Other personnel from the Service and Treasury Department, however, participated in their development.

List of Subjects in 26 CFR Part 48

Agriculture, Aircraft, Arms and munitions, Boats, coal, Excise taxes, Furs, Gasohol, Gasoline, Jewelry, Motor vehicles, Petroleum, Sporting goods, Tires.

Proposed Regulations

Accordingly, title 26, part 48 of the Code of Federal Regulations is proposed to be amended as follows:

PART 48—[AMENDED]

Paragraph 1. The authority for Part 48 is amended by adding the following citation: 26 U.S.C. 7805. * * * Section 48.4004–1 is also issued under 26 U.S.C. 4004(b). * * *

Par. 2. The table of contents for Part 48 is amended by adding subpart B to read as follows:

Subpart B—Certain Luxury Items

Sec.

48.4001–1 Luxury tax imposed on passenger vehicles.
48.4002–1 Luxury tax imposed on boats.
48.4003–1 Luxury tax imposed on aircraft.
48.4004–1 Rules applicable to all taxable vehicles.
48.4004–2 Additional exemptions from luxury vehicle taxes.
48.4004–3 Tax imposed on subsequent additions to taxable vehicles.
48.4004–4 Tax imposed on nonexempt resales and uses of exempt vehicles.
48.4006–1 Luxury tax imposed on jewelry.
48.4007–1 Luxury tax imposed on furs.
48.4011–1 Rules applicable to all taxable articles.
48.4011–2 Additional exemptions from luxury taxes.
48.4011–3 First retail sale.
48.4011–4 Sales price.
48.4011–5 Tax imposed on use of luxury article before there has been a first retail sale.
48.4011–6 Special rules for payment of tax on qualified leases and installment sales.
48.4011–7 Rules relating to exemption certificates.
48.4011–8 Effective date and miscellaneous issues.
48.4012–1 Termination.

Par. 3. Section 48.0–2 is amended as follows:

1. Sections 48.0–2(a)(6) and (7) are revised as set forth below.

2. In paragraph (b)(1), the words "For purposes of this part, the" are removed

and the word "The" is added in their place, and new introductory text is added to paragraph (b) to read as set forth below.

§ 48.0-2 General definitions and attachment of tax.

(a) *Meaning of terms.* * * *

(6) The term "taxable article" means any article taxable under chapter 31 or 32 of the Code.

(7) The term "vendor" or "seller" includes a lessor except that, with respect to the manufacturers excise taxes, this rule applies only where the lessor is also the manufacturer of the article.

* * * * *

(b) *Attachment of tax.* For purposes of this part, unless otherwise expressly indicated:

Par. 4. A new subpart B is added immediately following § 48.0–3 to read as follows:

Subpart B—Certain Luxury Items

§ 48.4001–1 Luxury tax imposed on passenger vehicles.

(a) *In general*—(1) *Imposition of tax.* Section 4001 imposes a tax (the luxury automobile tax) on the first retail sale of a passenger vehicle if the sales price of the vehicle exceeds $30,000.

(2) *Amount of tax.* The luxury automobile tax is equal to 10 percent of the amount by which the sales price of the vehicle exceeds $30,000.

(3) *Liability for tax.* The luxury automobile tax shall be paid by the person who makes the first retail sale.

(b) *Passenger vehicle defined*—(1) *In general.* For purposes of this section, the term "passenger vehicle" means a 4-wheeled vehicle that is manufactured or sold primarily for use on public streets, roads, and highways, and that is—

(i) Rated (except in the case of a truck, van, or limousine) at 6,000 pounds unloaded gross vehicle weight or less;

(ii) A truck or van rated at 6,000 pounds gross vehicle weight or less; or

(iii) A limousine.

(2) *Meaning of terms.* The following definitions set forth the meanings of certain terms for purposes of this paragraph (b)—

(i) *Unloaded gross vehicle weight.* The term "unloaded gross vehicle weight" means the curb weight of a vehicle fully equipped for service, but without passengers or cargo.

(ii) *Gross vehicle weight.* The term "gross vehicle weight" has the meaning given such term by § 145.4051–1(e)(3).

(iii) *Truck or van*—(A) *Van.* The term "van" means a vehicle (whether configured to transport cargo or passengers behind the driver's position) that—

(*1*) Is built on a truck chassis; and

(*2*) Has an enclosed body.

(B) *Multi-purpose and sport utility vehicles included.* The term "truck or van" includes vehicles that are commonly known as minivans or sport utility vehicles.

(iv) *Limousines.* The term "limousine" means any sedan seating four or more passengers behind the driver.

(c) *Exemption from luxury automobile tax for taxicabs, etc.* The luxury automobile tax is not imposed on the sale of a passenger vehicle for use by the purchaser exclusively (except for incidental and *de minimis* uses) in the active conduct of a trade or business of transporting persons or property for compensation or hire. A person who is otherwise responsible for the payment of the luxury automobile tax must establish the applicability of this exemption by evidence satisfactory to the Commissioner and may, for that purpose, rely upon an exemption certificate received from the purchaser.

(d) *Cross-references*—(1) *Exemption certificates.* See § 48.4011–7 for rules relating to exemption certificates.

(2) *Additional exemptions.* See §§ 48.4004–2 and 48.4011–2 for additional exemptions from the luxury automobile tax.

(3) *First retail sale and sales price.* See § 48.4011–3 for the definition of the term "first retail sale." See § 48.4011–4 for the definition of the term "sales price."

(4) *Tax imposed on use.* See § 48.4011–5 for rules relating to the tax imposed on passenger vehicles that are used before there has been a first retail sale.

(5) *Special rules for payment of tax in case of qualified lease or installment sale.* See § 48.4011–6 for rules relating to the payment of tax on qualified leases and installment sales.

(6) *Procedural rules.* For rules relating to the requirements for filing returns and for paying and depositing luxury automobile tax, see 26 CFR part 40.

(7) *Effective date and termination.* See § 48.4011–8 for the effective date of this section, and § 48.4012–1 for the termination of the luxury automobile tax.

§ 48.4002–1 Luxury tax imposed on boats.

(a) *In general*—(1) *Imposition of tax.* Section 4002 imposes a tax (the luxury boat tax) on the first retail sale of a boat if the sales price of the boat exceeds $100,000.

(2) *Amount of tax.* The luxury boat tax is equal to 10 percent of the amount by which the sales price of the boat exceeds $100,000.

(3) *Liability for tax.* The luxury boat tax shall be paid by the person who makes the first retail sale.

(b) *Boat defined.* For purposes of this section, the term "boat" means a waterborne vessel of any size or configuration that is—

(1) Propelled by engine, motor, or sail; and

(2) Capable of carrying one or more persons.

(c) *Exemptions from luxury boat tax*—(1) *Exemption for use in commercial fishing or transportation for hire.* The luxury boat tax is not imposed on the sale of a boat for use by the purchaser exclusively (except for incidental or *de minimis* uses) in the active conduct of a trade or business of—

(i) Commercial fishing; or

(ii) Transporting persons or property for compensation or hire.

(2) *Exemption for use in other businesses.* The luxury boat tax is not imposed on the sale of any boat for use by the purchaser exclusively (except for incidental and *de minimis* uses) in the active conduct of any trade or business (other than a trade or business described in paragraph (c)(1) of this section) unless the boat is to be used predominantly in activities that are of a type generally considered to constitute entertainment, amusement, or recreation.

(3) *Entertainment, amusement, or recreation.* For purposes of the exemption described in paragraph (c)(2) of this section, the phrase"entertainment, amusement, or recreaton" shall have the meaning given by Code section 274 (a)(1)(A) and the regulations thereunder. The limitation on entertainment, amusement, or recreation activities does not apply to the exemption described in paragraph (c)(1) of this section. Thus, a boat used in the conduct of a trade or business of transporting passengers for compensation or hire (such as a cruise ship, sightseeing boat, or any charter vessel that includes captain and for the exemption in paragraph (c)(1) even if the passengers engage in activities that could be considered entertainment, amusement, or recreation.

(4) *Establishment exemptions.* A person who is overwise responsible for the payment of the luxury boat tax must establish the applicability of an exemption provided by paragraph (c)(1) or (c)(2) of this section by evidence satisfactory to the Commissioner and may, for that purpose, rely upon an exemption certificate received from the purchaser.

(5) *Examples.* The provisions of this section are illustrated by the following examples.

Example 1. A purchases a boat for use exclusively as a dinner cruise ship in a restaurant business. *A* accepts passengers (either in groups or individually) for a fee. Even though the passengers engage in activities that are considered entertainment, amusement, or recreation, *A* is actively conducting a trade or business of transporting persons for compensation or hire. The luxury boat tax is not imposed.

Example 2. X, a corporation engaged in the trade or business of offshore marine construction, purchases a boat for use in its business. The boat is normally used to take prospective clients on trips that include business discussions as well as meals, sightseeing, fishing or waterskiing. Occasionally, the boat is used to take materials to construction sites. Under these circumstances, the boat is used predominantly for entertainment, amusement, or recreation, and the luxury boat tax may be imposed.

(d) *Cross-references*—(1) *Exemption certificates.* See § 48.4011–7 for rules relating to exemption certificates.

(2) *Additional exemptions.* See §§ 48.4004–2 and 48.4011–2 for additional exemptions from the luxury boat tax.

(3) *First retail sale and sales price.* See § 48.4011–3 for the determination of the term "first retail sale." Sea § 48.4011–4 for the definitions of the term "sales price."

(4) *Tax imposed on use.* See § 48.4011–5 for rules relating to the tax imposed on boats that are used before there has been a first retail sale.

(5) *Special rules for payment of tax in case of qualified lease or installment sale.* See § 48.4011–6 for rules relating to the payment of tax on qualified leases and installment sales.

(6) *Procedural rules.* For rules relating to the requirements for filing returns and for paying and depositing luxury boat tax, see 26 CFR part 40.

(7) *Effective date.* See § 48.4011–8 for the effective date of this section, and § 48.4012–1 for the termination of the luxury boat tax.

§ 48.4003–1 Luxury tax imposed on aircraft.

(a) *In general*—(1) *Imposition of tax.* Section 4003 imposes a tax (the luxury aircraft tax) on the first retail sale of an aircraft if the sales price of the aircraft exceeds $250,000.

(2) *Amount of tax.* The luxury aircraft tax is equal to 10 percent of the amount by which the sales price of the aircraft exceeds $250.000

(3) *Liability for tax.* The luxury aircraft tax shall be paid by the person who makes the first retail sale.

(b) *Aircraft defined.* For purposes of this section, the term "aircraft" means any airborne vessel that is—

(1) Propelled by an engine or motor; and

(2) Capable of carrying one or more persons.

(c) *Exemptions from luxury aircraft tax—(1) Exemption for exclusion use in specific businesses.* The luxury airraft tax is not imposed on the sale of an aircraft, for use by the purchaser exclusively (except for incidental and *de minimis* uses) in one or more of the following activities.

(i) Aerial application of fertilizer or other substance;

(ii) In the case of a helicopter, (A) transporting individuals, equipment, or supplies in the exploration for, or the development or removal of, hard minerals, oil, or gas, or (B) planting, cultivating, cutting, transporting, or caring for trees (including logging operations; or

(iii) A trade or business of providing flight training; or

(iv) A trade or business of transporting persons or property for hire.

(2) *Exemption for 80 percent use in any trade or business*—(i) *In General.* The luxury aircraft tax is not imposed on the sale of an aircraft if at least 80 percent the purchaser's use of the aircraft will be in any trade or business. For purposes of this exemption, use is measured in hours (or fractions thereof) of flight time.

(ii) *Proof of business use.* If the sale of an aircraft is exempt from the luxury aircraft tax solely by reason of the exemption described in this paragraph (c)(2), the purchaser must demonstrate to the satisfaction of the Commissioner that the use of the aircraft met the requirement of paragraph (c)(2)(i) of this section for each of the purchaser's first two taxable years ending after the aircraft is placed in service. This proof-of-business-use requirement is not satisfied for a taxable year unless the purchaser certifies, on the purchaser's income tax return for the taxable year that at least 80 percent of the purchaser's use of the aircraft during the taxable year was in a trade or business. The certification shall be made in the manner and form prescribed by the Commissioner.

(iii) *Tax imposed if failure to provide proof of business use.* If the purchaser of an aircraft is required to satisfy the proof-of-business-use requirement of paragraph (c)(2)(ii) of this section and fails to do so, the following rules apply:

(A) A tax is imposed in an amount equal to the luxury aircraft tax that, but for the exemption in paragraph (c)(2)(i) of this section, would have been imposed on the sale of the aircraft.

(B) The tax is imposed on the due date (with extensions) of the purchaser's income tax return for the first taxable year for which the proof-of business-use requirement is not satisfied.

(C) Interest shall be paid on amounts payable under this paragraph (c)(2)(iii) for the period from the date of the sale of the aircraft until the date such amounts are paid. Interest payable under this paragraph (c)(2)(iii) shall be computed at the underpayment rate established under section 6621 and in the manner prescribed in section 6622.

(D) The tax and interest payable under this paragraph (c)(2)(iii) shall be paid by the purchaser in the manner and at the time prescribed in §§ 40.6011–1T and 40.6151–1T.

(E) If the purchaser fails to pay the tax when due, a penalty for failure to pay tax may be imposed under section 6651, and no deduction shall be allowed under section 168 for any taxable year with respect to the aircraft.

(3) *Overlapping exemptions.* A sale of an aircraft that would be exempt from tax under both of the exemptions described in paragraphs (c)(1) and (c)(2) of this section shall be treated as—

(i) A sale that is exempt from tax only under paragraph (c)(2) of this section if the purchaser certifies to the seller that the exemption described therein applies to the sale; and

(ii) A sale that is exempt from tax only under paragraph (c)(1) of this section if the purchaser does not certify to the seller that the exemption described in paragraph (c)(2) of this section applies to the sale.

(4) *Establishing exemptions.* A person who is otherwise responsible for the payment of the luxury aircraft tax must establish the applicability of an exemption provided in paragraph (c)(1) or (c)(2) of this section by evidence satisfactory to the Commissioner and may, for that purpose, rely upon an exemption certificate received from the purchaser.

(d) *Cross-references*—(1) *Exemption certificates.* See § 48.4011–7 for rules relating to exemption certificates.

(2) *Additional exemptions.* See §§ 48.4004–2 and 48.4011–2 for additional exemptions from the luxury aircraft tax.

(3) *First retail sale and sales price.* See § 48.4011–3 for the definition of the term "first retail sale." See § 48.4011–4 for the definition of the term "sales price."

(4) *Tax imposed on use.* See § 48.4011–5 for rules relating to the tax imposed on

aircraft that are used before there has been a first retail sale.

(5) *Special rules for payment of tax in case of qualified lease or installment sale.* See § 48.4011–6 for rules relating to the payment of tax on qualified leases and installment sales.

(6) *Procedural rules.* See 26 CFR part 40 for rules relating to the requirements for filing returns and for paying and depositing luxury aircraft tax.

(7) *Effective date and termination.* See § 48.4011–8 for the effective date of this section, and § 48.4012–1 for the termination of the luxury aircraft tax.

§ 48.4004–1 Rules applicable to all taxable vehicles.

(a) *In general.* Section 48.4004–2 provides rules relating to exemptions from the luxury automobile tax, the luxury boat tax, and the luxury aircraft tax. Sections 48.4004–3 and 48.4004–4 provide rules relating to additional taxes on passenger vehicles, boats, and aircraft.

(b) *Meaning of terms.* For purposes of §§ 48.4004–2, 48.4004–3, and 48.4004–4—

(1) The term "luxury vehicle tax" means the luxury automobile tax, the luxury boat tax, or the luxury aircraft tax, whichever is applicable.

(2) The term "taxable vehicle" means any passenger vehicle, boat, or aircraft.

§ 48.4004–2 Additional exemptions from luxury vehicle taxes.

(a) *Exemption for exclusive use in a trade or business*—(1) *Transporting persons or property for hire.* A taxable vehicle is not used in the active conduct of a trade or business of transporting persons or property for compensation or hire unless—

(i) The vehicle is being held out to the public as available for hire;

(ii) The operator charges adequate and full consideration, in money or money's worth, for transporting persons or property; and

(iii) In the case of a taxable vehicle that is leased or rented, the lessor provides a driver, captain or pilot who is licensed to transport persons or property for hire.

(2) *Incidental and de minimis uses.* In determining whether a taxable vehicle is used "exclusively" in the trade or business (or activity or combination of activities) specified in an exemption from the luxury vehicle taxes, incidental uses and a minimal amount of other use outside of that trade or business (or activity or combination of activities) will be disregarded.

(3) *Examples.* The provisions of this paragraph (a) are illustrated by the following examples.

Example 1. A, an individual, purchases an unusual limousine as an investment. A is licensed by the State to drive a limousine for hire, but does not advertise that the vehicle is available for hire. A occasionally charges acquaintances a token amount for driving the car in wedding parties and other special events. The car is not being used in the active conduct of the trade or business of transporting persons or property for compensation for hire.

Example 2. B, an individual, owns a luxury taxicab that is used in B's business of providing taxi services to the general public. In addition, however, B often uses the taxicab to pick up family members or to go shopping. These uses are not incidental to the use of the vehicle as a taxicab, and are not minimal nonbusiness uses. Therefore, the taxicab does not qualify for the exemption described in § 48.4001–1(c)(1).

Example 3. A boat that is used to teach waterskiing to tourists is docked at the instructor's home each night. On rare occasions, the instructor uses the boat to tow neighbors' boats to a marina for servicing. Because the boat must be docked at night, the trips to and from the instructor's home are incidental to its exclusive use in the active conduct of a trade or business of transporting persons for compensation or hire. Because the towings are infrequent, they are minimal personal uses that will not prevent the boat from qualifying for the exemption described in § 48.4002–1(c)(1).

Example 4. A helicopter that is used in logging operations is generally flown to a nearby airport when it needs servicing. The helicopter is also used to give tours to company executives and interested nature groups. Because the vehicle must be serviced, the trips to the airport are incidental to the exclusive use of the aircraft in timber operations. The tours are not incidental uses, however, and (unless they are quite rare) the helicopter does not qualify for the exclusive use exemption described in § 48.4003–1(c)(1). (For purposes of the exemption described in § 48.4003–1(c)(2), however, both the trips to the airport and any tours given in the ordinary course of a trade or business are counted as business use in determining whether the 80%-business-use requirement is satisfied.)

(b) *Exemption for certain governmental uses*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, the luxury vehicle tax is not imposed on the sale of a taxable vehicle if the vehicle—

(i) Is sold the Federal Government, to a state or local government or to the District of Columbia; and

(ii) Is sold for use by the purchaser exclusively in police, fire fighting, search and rescue, or other law enforcement or public safety activities, or in public works activities.

(2) *No exemption for executive vehicles, etc.* The exemption described in paragraph (a)(1) of this section does not apply to the sale of any taxable vehicle purchased for use in the transportation, entertainment, amusement, or recreation of elected or appointed government officials. For example, the exemption does not apply to—

(i) The sale of an automobile that is purchased for use in transporting one or more elected officials;

(ii) The sale of a helicopter that is purchased by a State law enforcement agency for use in transporting elected officials; or

(iii) The sale of a boat that is purchased, with either appropriated or non-appropriated funds, for the recreational or personal use of government employees.

(c) *Exemption for emergency medical services.* The luxury vehicle tax is not imposed on the sale of a taxable vehicle to any person for use exclusively in providing emergency medical services. For this purpose, emergency medical services include emergency medical treatment (e.g., first-aid and paramedic services) and emergency medical transportation (e.g., ambulance services).

(d) *Exemption certificates.* A person who is otherwise responsible for the payment of the luxury vehicle tax must establish the applicability of an exemption under paragraph (b)(1) or (c) of this section by evidence satisfactory to the Commissioner and may, for that purpose, rely upon an exemption certificate received from the purchaser. See § 48.4011–7 for rules relating to exemption certificates.

§ 48.4004–3 Tax imposed on subsequent additions to taxable vehicles.

(a) *In general*—(1) *Imposition of tax.* Section 4004(b) imposes a tax (the subsequent additions tax) on the installation of a part or accessory (other than a part or accessory described in paragraph (c) or (d) of this section) on a taxable vehicle if, after the date the vehicle was first placed in service—

(i) The owner, operator, or lessee of the vehicle either installs the part or accessory or causes the part or accessory to be installed;

(ii) the part or accessory is installed during the 6-month period after the date on which the vehicle is first placed in service;

(iii) At the time the part or accessory is installed, the use to which the vehicle is being put would not entitle it to an exemption from the luxury vehicle tax; and

(iv) The adjusted price of the vehicle exceeds—

(A) $30,000 in the case of an passenger vehicle;

(B) $100,000 in the case of a boat; or

(C) $250,000 in the case of an aircraft.

(2) *Amount of tax.* The subsequent additions tax is equal to 10 percent of the lesser of—

(i) The sales price of the part or accessory and its installation; and

(ii) The amount by which the adjusted price of the taxable vehicle exceeds—

(A) $30,000 in the case of a passenger vehicle;

(B) $100,000 in the case of a boat; or

(C) $250,000 in the case of an aircraft.

(3) *Liability for tax*—(i) *Liability of owner, operator, or lessee.* The primary liability for the subsequent additions tax is imposed on the owner, operator, or lessee who installs the part or accessory or causes the part or accessory to be installed.

(ii) *Liability of installer.* The owner of the trade or business that installs the part or accessory (the installer) is required to collect the subsequent additions tax and pay that tax over to the Internal Revenue Service. If the installer fails to collect and pay over the tax when required to do so, the installer is secondarily liable for the tax. The installer must establish the applicability of any exemption from the luxury vehicles tax (for example, by reason of the fact that the vehicle is devoted to an exempt use) by evidence satisfactory to the Commissioner and may, for that purpose, rely upon an exemption certificate received from the owner, operator or lessee of the vehicle. See § 48.4011–7 for rules relating to exemption certificates.

(b) *Adjusted price of taxable vehicle.* For purposes of determining whether the subsequent additions tax is imposed on any part or accessory installed on a taxable vehicle and the amount of the subsequent additions tax, the adjusted price of the vehicle is equal to the sum of—

(1) The sales price of the part or accessory and its installation;

(2) The aggregate sales price of all parts and accessories (and their installation) installed before such part or accessory; and

(3) the sales price of the taxable vehicle.

(c) *Exception for replacement parts.* The subsequent additions tax does not apply to a part of accessory that is a replacement part or accessory. A part or accessory is a replacement part or accessory only if it—

(1) Actually replaces (as opposed to supplements) a part or accessory that was on the vehicle when the owner, operator or lessee took control of the vehicle;

(2) Is of the same general style, quality, purpose, and appearance as the part of accessory it replaced (for example, an automatic electric bilge pump is not a replacement part for a manual bilge pump, even if the manual bilge pump is removed).

(d) *Exception for minor additions.* The subsequent additions tax is not imposed on a part or accessory if the sum of the amounts described in paragraphs (b)(1) and (2) of this section does not exceed $200.

(e) *Sales price of part or accessory.* The sales price of a part or accessory will be determined under rules similar to the rules of § 48.40011–4, except that the trade-in value of any parts or accessories kept by the installer is not added to price paid by the owner, operator or lessee in cash or other property or services.

(f) *Procedural rules.* See 26 CFR part 40 for rules relating to the requirements for filing returns and paying the tax.

§ 48.4004–4 Tax imposed on nonexempt resales and uses of exempt vehicles.

(a) *In general*—(1) *Imposition of tax.* Section 4004(c) imposes a tax (the exemption recapture tax) on the first nonexempt resale, nonexempt re-lease or substantial nonexempt use of a taxable vehicle if—

(i) The applicable luxury vehicle tax was not imposed on the first retail sale of the taxable vehicle by reason of an exemption described in § 48.4001–1(c), § 48.4002–1(c), § 48.4003–1(c)(1), or § 48.4004–2; and

(ii) The nonexempt resale, nonexempt re-lease, or substantial nonexempt use occurs within 2 years after the date of the first retail sale.

(2) *Amount of tax.* The exemption recapture tax is equal to 10 percent of the amount by which the fair market retail value of the taxable vehicle at the time of the nonexempt resale, nonexempt re-lease or substantial nonexempt use exceeds—

(i) $30,000 in the case of a passenger vehicle;

(ii) $100,000 in the case of a boat; or

(iii) $250,000 in the case of an aircraft.

(3) *Liability for tax.* The exemption recapture tax imposed on a nonexempt resale or re-lease is paid by the seller or lessor that resells or re-leases the vehicle. The exemption recapture tax imposed on a substantial nonexempt use is paid by the owner or lessee of the vehicle at the time of the substantial nonexempt use.

(b) *Nonexempt resale or re-lease.* A nonexempt resale or re-lease is any sale or lease on which a luxury vehicle tax would be imposed if it were a first retail sale.

(c) *Substantial nonexempt use*—(1) *In general.* A substantial nonexempt use is any use (other than an incidental use or a minimal amount of use outside of the exempt activity) that does not qualify for an exemption described in § 48.4001–1(c), § 48.4002–1(c), § 48.4003–1(c)(1), or § 48.4004–2.

(2) *Example.* The provisions of this section are illustrated by the following example.

Example. A police officer drives a police car to and from home during nonduty hours for garaging. Because the vehicle must be garaged or stored when not in use, the trips to and from the officer's home are incidental to the exclusive use of the car in law enforcement and are not a substantial nonexempt use.

§ 48.4006–1 Luxury tax imposed on jewelry.

(a) *In general*—(1) *Imposition of tax.* Section 4006 imposes a tax (the luxury jewelry tax) on the first retail sale of jewelry if the sale price of the jewelry exceeds $10,000.

(2) *Amount of tax.* The luxury jewelry tax is equal to 10 percent of the amount by which the sales price of the jewelry exceeds $10,000.

(3) *Liability for tax.* The luxury jewelry tax shall be paid by the person who makes the first retail sale.

(b) *Jewelry defined.* For purposes of this section, the term "jewelry" means articles designed to be worn on the person or apparel for the purpose of adornment, such as watches, rings, chains, brooches, bracelets, cuff links, necklaces, earrings, etc. An article that meets this definition (e.g. a belt or belt buckle) is jewelry regardless of the substance of which it is made and without reference to its utilitarian value or purpose. Articles that are not worn (e.g. desk clocks, unmounted gemstones) are not jewelry merely because they are adorned with precious metals or stones or are commonly sold by retail jewelers. A pair of earrings, pair of cufflinks, or set of studs is a single item of jewelry.

(c) *Production from customer's material*—(1) *In general.* If, in the course of a trade or business, a person produces (or causes to be produced) jewelry from materials furnished (directly or indirectly, in whole or in part) by a customer, and the jewelry is for the use of, and not for resale by, the customer, the delivery of the jewelry to the customer shall be considered a first retail sale of the jewelry for a price equal to its fair market retail value at the time of delivery.

(2) *Production.* For purposes of this paragraph (c), production includes any services, performed on materials provided or purchased by or on behalf of a customer, that are not repairs or slight modifications.

(3) *Exemption for repairs and slight modifications—(i) In general.* For purposes of this paragraph (c), repairs or slight modifications to an existing article of jewelry are not treated as the production of jewelry.

(ii) *Repairs.* For purposes of this paragraph (c), the term "repairs" means services that return a damaged or worn article to its original style and quality, without altering the purpose or appearance of the article. Jewelry repairs include cleaning an article, replacing a loose, lost or broken gemstone, fixing or replacing a broken clasp, or restringing a worn or broken strand of pearls. However, adding a gemstone to an empty new setting, recutting a gemstone in an article of jewelry, or changing the style of an article of jewelry are never repairs. A provider of services who is otherwise responsible for the payment of the luxury jewelry tax may establish by evidence satisfactory to the Commissioner that the services provided constitute repairs and may, for that purpose, rely upon an exemption certificate received from the customer to the effect that the requested services will return the article to its original condition (before the damage or wear).

(iii) *Slight modifications.* For purposes of this paragraph (c), the term "slight modifications" means services that make it possible for a particular user to wear an article, without altering the purpose, style, quality, or appearance of the article. Slight modifications to jewelry include resizing a ring and converting earrings from pierced to clip-on or vice versa.

(4) *Fair market retail value at the time of delivery.* For purposes of this paragraph (c), the person engaged by a customer to perform services (the service provider) is responsible for appraising the fair market retail value of the finished article (or for having the article appraised) and for paying the luxury jewelry tax based on that value. In making an appraisal, the service provider (or other appraiser) may determine the cost to the customer of materials provided by or on behalf of the customer by reference to the customer's written certification regarding such cost if the service provider (or other appraiser) relies on the certificate in good faith. In general, the tax on the finished jewelry may not be based on an appraised value (whether determined by the service provider or an independent appraiser) that is less than the sum of the material cost certified by the customer and the value of materials and labor added by the service provider.

(5) *Examples.* The provisions of this paragraph (1) are illustrated by the following examples:

Example 1. A customer takes a diamond brooch to a jeweler and asks that the stones be reset as a necklace. The jeweler resets the stones as requested, providing any additional materials needed to produce the necklace, and delivers the necklace to the customer. The jeweler charges $1,000 for labor and materials. The fair market retail value of the necklace when delivered is $12,000. The jeweler has produced an article of jewelry from material provided by the customer. The jeweler is liable for a tax of $200 on the transaction (($12,000−$10,000)×10%). The tax is imposed at the time the necklace is delivered to the customer.

Example 2. A customer brings a broken strand of pearls to a jeweler for restringing. The jeweler restrings the pearls to the same design as the broken strand and replaces a defective clasp with a new clasp of similar style and quality. The jeweler charges $250 for these services. Although the repaired strand of pearls has a fair market retail value of $12,000, restringing the pearls and replacing the clasp are repairs of an existing article, and the delivery of the article to the customer is not subject to the luxury jewelry tax.

Example 3. A customer brings a ring setting to a jeweler and claims to have lost a 2-carat round diamond from the setting. The customer selects a $30,000 stone and the jeweler offers to set the stone at no additional charge. The jeweler examines the setting, but is unable to either confirm or disprove the customer's claims. The jeweler receives and reasonably relies on the customer's signed certification that a 2-carat round diamond of similar quality was lost from the setting. The certification relieves the jeweler of liability for the luxury jewelry tax. If it is later discovered that the customer's claims were not true, the customer may be subject to civil and criminal penalties under Subtitle F of the Code.

Example 4. A person has a diamond from an existing ring reset in a new ring mounting while on a trip abroad and returns to the United States with the ring. The ring is considered to have been manufactured abroad and imported into the United States. The fair market value of the ring is $20,000. The person is liable for tax on the first use of the remanufactured ring after importation. See § 48.4011–5.

(d) *Cross-references—(1) Exemption certificates.* See § 48.4011–7 for rules relating to exemption certificates.

(2) *Additional exemptions.* See §§ 48.4004–2 and 48.4011–2 for additional exemptions from the luxury jewelry tax.

(3) *First retail sale and sales price.* See § 48.4011–3 for the definition of the term "first retail sale." See § 48.4011–4 for the definition of the term "sales price."

(4) *Tax imposed on use.* See § 48.4011–5 for rules relating to the tax imposed on jewelry that is used before there has been a first retail sale.

(5) *Special rules for payment of tax in case of qualified lease or installment sale.* See § 48.4011–6 for rules relating to the payment of tax on qualified leases and installment sales.

(6) *Procedural rules.* For rules relating to the requirements for filing returns and for paying and depositing luxury jewelry tax, see 26 CFR part 40.

(7) *Effective date and termination.* See § 48.4011–8 for the effective date of this section, and § 48.4012–1 for the termination of the luxury jewelry tax.

§ 48.4007–1 Luxury tax imposed on furs.

(a) *In general—(1) Imposition of tax.* Section 4007 imposes a tax (the luxury fur tax) on the first retail sale of a fur if the sales price of the fur exceeds $10,000.

(2) *Amount of tax.* The luxury fur tax is equal to 10 percent of the amount by which the sales price of the fur exceeds $10,000.

(3) *Liability for tax.* The luxury fur tax shall be paid by the person who makes the first retail sale.

(b) *Fur defined—(1) In general.* For purposes of this section, the term "fur" means an article of clothing made of fur on the hide or pelt of an animal, or an article of clothing of which fur on the hide or pelt is a major component. The term "fur" does not include leather, which is the dressed skin of an animal without any hair or fur.

(2) *Major component.* For purposes of this paragraph, fur is a major component of an article if—

(i) Fur comprises more than 25% of the total surface area (both exterior and lining) of the article; or

(ii) Fur represents more than 35% of the cost of the raw materials that comprise the article.

(c) *Production from customer's material—(1) In general.* If, in the course of a trade or business, a person produces, (or causes to be produced) a fur from materials furnished (directly or indirectly, in whole or in part) by a customer, and the fur is for the use of, and not for resale by, the customer, the delivery of the fur to the customer shall be considered a first retail sale of the fur for a price equal to its fair market retail value at the time of delivery.

(2) *Production.* For purposes of this paragraph (c), production includes any services, performed on materials provided or purchased by or on behalf of a customer, that are not repairs or slight modifications.

(3) *Exemption for repairs and slight modifications—(i) In general.* For purposes of this paragraph (c), repairs or

slight modifications to an existing fur are not treated as the production of a fur.

(ii) *Repairs.* For purposes of this paragraph (c), the term "repairs" means services that return a damaged or worn article to its original style and quality, without altering the purpose or appearance of the article. Fur repairs include cleaning an article, sewing a torn seam, and replacing a damaged pelt. However, adding pelts in order to lengthen a fur or restyling any part of a fur are never repairs. A provider of services who is otherwise responsible for the payment of the luxury fur tax may establish by evidence satisfactory to the Commissioner that the services provided constitute repairs and may, for that purpose, rely upon an exemption certificate received from the customer to the effect that the requested services will return the article to its original condition (before the damage or wear).

(iii) *Slight modifications.* For purposes of this paragraph (c), the term "slight modifications" means services (other than the addition of pelts) that make it possible for a particular user to wear an article, without altering the purpose, style, quality or appearance of the article. Slight modifications to furs include raising or lowering a hem or a sleeve.

(4) *Fair market retail value at the time of delivery.* For purposes of this paragraph (c), the person engage by a customer to perform services (the service provider) is responsible for appraising the fair market retail value of the finished article (or for having the article appraised) and for paying the luxury fur tax based on that value. In making an appraisal, the service provider (or other appraiser) may determine the cost to the customer of materials provided by or on behalf of the customer by reference to the customer's written certification regarding such cost if the service provider (or other appraiser) relies on the certificate in good faith. In general, the tax on the finished fur may not be based on an appraised value (whether determined by the service provider or an independent appraiser) that is less than the sum of the material cost certified by the customer and the value of materials and labor added by the service provider.

(5) *Examples.* The provisions of this paragraph (c) are illustrated by the following examples:

Example 1. A customer brings a full length sable coat to a furrier for alteration and modernization. The furrier recuts the coat to a more fashionable design, removing and adding pelts as necessary. The furrier charges $1,500 for the alterations. As redesigned the coat has a fair market retail value of $15,000. The furrier has produced a fur from material provided by the customer. The furrier is liable for a tax of $500 (($15,000 - $10,000) X 10%). The tax is imposed when the fur is delivered to the customer.

Example 2. A customer brings a sable jacket to a furrier with a torn sleeve and several damaged pelts. The furrier resews the sleeve, replaces the damaged pelts with pelts carefully selected to match the old pelts' color and quality, refits the jacket to the customer, and cleans the finished garment. The furrier charges $2,000 for these services. Although the repaired jacket has a fair market retail value of $18,000, resewing the sleeve, replacing the damaged pelts, and cleaning the jacket are repairs, and refitting the jacket is a slight modification. Therefore, the delivery of the finished jacket to the customer is not subject to the luxury fur tax.

(d) *Cross-references*—(1) *Exemption certificates.* See § 48.4011–7 for rules relating to exemption certificates.

(2) *Additional exemptions.* See §§ 48.4004–2 and 48.4011–2 for additional exemptions from the luxury fur tax.

(3) *First retail sale and sales price.* See § 48.4011–3 for the definition of the term "first retail sale." See § 48.4011–4 for the definition of the term "sales price."

(4) *Tax imposed on use.* See § 48.4011–5 for rules relating to the tax imposed on fur that is used before there has been a first retail sale.

(5) *Special rules for payment of tax in case of qualified lease or installment sale.* See § 48.4011–6 for rules relating to the payment of tax on qualified leases and installment sales.

(6) *Procedural rules.* For rules relating to the requirements for filing returns and for paying and depositing luxury fur tax, see 26 CFR part 40.

(7) *Effective date and termination.* See § 48.4011–8 for the effective date of this section, and § 48.4012–1 for the termination of the luxury fur tax.

§ 48.4011–1 Rules applicable to all taxable articles.

(a) *In general.* Section 48.4011–2 provides rules relating to additional exemptions from the luxury automobile tax, the luxury boat tax, the luxury aircraft tax, the luxury jewelry tax, and the luxury fur tax. Sections 48.4011–3 and 48.4011–4 define the terms first retail sale and sales price, respectively, for purposes of those taxes. Section 48.4011–5 provides rules relating to the luxury tax imposed on passenger vehicles, boats, aircraft, jewelry, and furs that are used before there has been a first retail sale. Section 48.4011–6 provides rules for payment of the tax in the case of a qualified lease or an installment sale. Section 48.4011–7 provides rules relating to customers' certifications. Section 48.4011–8 provides rules relating to effective dates.

(b) *Meaning of terms.* For purposes of §§ 48.4011–2, 48.4011–3, 48.4011–4, 48.4011–5, 48.4011–6, 48.4011–7, and 48.4011–8—

(1) The term "luxury tax" means the luxury automobile tax, the luxury boat tax, the luxury aircraft tax, the luxury jewelry tax, or the luxury fur tax, whichever is applicable; and

(2) The term "taxable article" means any passenger vehicle, boat, aircraft, jewelry, or fur.

§ 48.4011–2 Additional exemptions from luxury taxes.

(a) *Exemption for exports—(1) In general.* The luxury tax is not imposed on the sale of a taxable article for export if the requirements of section 4221 are satisfied. See § 48.4221–3 for rules relating to tax-free sales for export.

(2) *Proof of exportation of jewelry or fur.* In the case of jewelry or fur, the proof of exportation requirement of § 48.4221–3(c) will be treated as satisfied if the seller relies in good faith on a certification given by the purchaser at the time the sale occurs. The certificate must contain representations that the purchaser is purchasing the article in order to export it from the United States within six months from the date of sale and will not resell the item in the United States. The seller may rely on the certificate only if the seller also sees the purchaser's current passport issued by a foreign country and the purchaser's airplane or boat ticket for departure from the United States within six months, and records on the certificate the purchaser's passport number and country of issuance, and the carrier, flight or trip number, departure and destination points, and date of the purchaser's departure. In the case of a resident of a U.S. possession, the requirements of the preceding sentence relating to passports are satisfied if the seller sees proof of the purchaser's permanent residence in a possession and records sufficient identifying information (such as a driver's license number). See § 48.4011–7 for rules relating to exemption certificates.

(b) *Exemption where tax previously imposed—(1) In general.* The luxury tax is not imposed on the sale, lease or use of a taxable article if—

(i) The luxury tax was imposed on a prior sale, lease or use of that article; or

(ii) The luxury tax would have been imposed if the luxury tax had been in effect at the time of the prior sale, lease or use of that article.

(2) *Proof that tax was or would have been previously imposed.* A person who is otherwise responsible for the payment of the luxury tax must establish the applicability of an exemption under paragraph (b)(1) of this section by evidence satisfactory to the Commissioner. To prove the applicability of the exemption in paragraph (b)(1)(ii) of this section, a person might, for example, show a receipt from a retail sale or lease that occurred prior to January 1, 1991; a business record showing all articles that the seller used before January 1,1991, and held in inventory on December 31, 1990; or any other satisfactory evidence. For this purpose, a person may rely on an exemption certificate received from the previous owner or consignor to the effect that the article was sold at retail, leased, or used prior to January 1, 1991. See § 48.4011–7 for rules relating to exemption certificates.

(3) *Use and used defined.* For purposes of this section, the terms "use" and "used" refer to use in a manner that subjected the user to the use tax under § 48.4011–5 or would have subjected the user to the use tax had it been in effect at the time of the use.

(4) *Anti-abuse rule.* Paragraph (b)(1)(ii) of this section shall not apply to any article that was used before January 1, 1991, in an attempt to avoid the imposition of the luxury tax on any later sale, lease or use of that article.

(c) *Exemption for imported articles used before January 1, 1991.* The luxury tax is generally imposed on the first sale, lease or use of an imported article (like an automobile imported by an individual for personal use), even if the article is a used article. See § 48.4011–5. The luxury tax is not imposed, however, on the sale, lease, or use of an imported taxable article if the person otherwise responsible for payment of the luxury tax can establish to the satisfaction of the Commissioner that the first use of the article occurred before January 1, 1991, outside the United States. Proof of such use may be shown by copies of the official logbook of a boat or aircraft; by registration documents issued by a foreign country for a vehicle; or by an other proof satisfactory evidence. For this purpose, a person otherwise responsible for payment of the luxury tax may rely upon a certificate received from the foreign vendor or consignee establishing prior use. See § 48.4011–7 for rules relating to exemption certificates.

(d) *Examples.* The provisions of this section are illustrated by the following examples.

Example 1. A jeweler sells a pearl necklace for $35,000 to a French citizen visiting the United States. The purchaser certifies to the jeweler that the necklace will be exported from the United States within 6 months. In addition, the jeweler inspects the purchaser's passport and return airplane ticket and records identifying information from both on the certificate. The purchaser leaves the jeweler's store with the necklace and provides no further proof that the necklace has been exported. The proof of exportation requirement of § 48.4221–3(c) is satisfied if the jeweler relies on the certificate in good faith. Thus, in the absence of any other circumstances that would preclude such reliance, the luxury tax is not imposed on the sale of the necklace.

Example 2. The facts are the same as in example (1), except that the seller is an automobile dealer and the article sold is a luxury automobile. Although the sale of the automobile may initially be exempt from tax, the exemption will expire at the end of the 6-month period beginning on the date of the sale unless the proof of exportation requirement of § 48.4221–3(c) is satisfied. Moreover, good faith reliance on the purchaser's certificate is not treated as proof of exportation of the automobile. Accordingly, the seller will become liable for the luxury automobile tax on the day after the end of the 6-month period.

Example 3. On December 15, 1990, an automobile dealer arranges for one of the dealership's salespeople to have the use of a luxury automobile from the dealer's inventory to commute to and from home and for other personal and business purposes. When the dealer sells the automobile to a customer on January 16, 1991, the odometer indicates that the automobile has been driven 175 miles. Because the automobile is not "used" under the principles of § 48.4011–5, the luxury automobile tax is imposed on the sale.

§ 48.4011–3 First retail sale.

(a) *In general*—(1) *First retail sale defined.* For purposes of the luxury tax, the first retail sale of a taxable article is the first retail sale of the article after its manufacture, production, or importation.

(2) *Retail sale defined.* The term "retail sale" means—

(i) Any sale that is not described in paragraph (a)(3) of this section; and

(ii) Any lease (including any renewal or extension of a lease, or any subsequent lease).

(3) *Excluded sales.* The following transactions are not treated as retail sales:

(i) A sale of an article for use by the purchaser as material in the manufacture or production of, or as a component part of, another taxable article.

(ii) A sale or lease of a taxable vehicle, to a person engaged in the trade or business of leasing or renting vehicles, for leasing by such person in a qualified lease; or

(iii) A sale for resale. A sale for resale includes a sale after which, and before using the article in a taxable use, the purchaser resells the article or leases the article in a qualified lease.

(4) *Exemption certificate.* A sale is treated as an excluded sale (i.e., the sale is not a retail sale) if the person who is otherwise responsible for the payment of the luxury tax receives from the purchaser an exemption certificate to the effect that the sale qualifies for one of the exclusions described in paragraph (a)(3) of this section. A sale will not be treated as an excluded sale described in paragraph (a)(3) of this section if the purchaser delivers an exemption certificate, before taking delivery of the article, to the effect that the article is not being purchased for resale or leasing in a qualified lease. See § 48.4011–7 for rules relating to exemption certificates.

(5) *Sale defined.* See § 48.0–2(a)(5) for the definition of the term "sale."

(6) *Importation defined.* For purposes of the luxury taxes, the term "importation" shall be interpreted consistently with applicable customs law.

(7) *Qualified lease defined.* See § 48.4011–6 for the definition of the term "qualified lease".

(b) *Leases and rentals.* If a lease (including a qualified lease or a rental) of a taxable article is treated as the first retail sale of the article, the luxury tax is imposed on the lease of the article and is paid by the lessor of the article.

(c) *Auctioneers and other consignees.* If a sale of a taxable article by an auctioneer or other consignee is treated as its first retail sale, the luxury tax is paid by the auctioneer or consignee.

(d) *Refund permitted if sale rescinded*—(1) *In general.* If the first retail sale of any taxable article is rescinded at any time, the seller may claim a full refund of the luxury tax paid with respect to that article.

(2) *Proof of rescission.* To qualify for a refund under this paragraph (d), the seller must establish to the satisfaction of the Commissioner that—

(i) The purchaser returned the article to the seller;

(ii) The seller refunded the full sale price to the purchaser; and

(iii) The seller returned the article to inventory for resale as a new article.

(3) *Treatment of subsequent sale.* In any case where the seller qualifies for a refund under this paragraph (d), the rescinded first retail sale shall be ignored for purposes of the luxury tax, and the next retail sale shall be treated as the first retail sale. This paragraph does not apply to the cancellation of a

lease or installment sale; see §§ 48.4011–6(a)(5) and –6(b)(3).

(4) *Examples.* The provisions of this paragraph are illustrated by the following examples

Example 1. B purchases a luxury fur from A and writes a check for the full sales price. A pays the appropriate luxury tax. B's check is not honored. After repeated attempts to negotiate B's check or to get B to settle the account, A hires a collection agent to either collect the money from B, or repossess the fur. A is not entitled to a refund of the luxury tax paid unless the fur is repossessed and returned to A's inventory for sale as a new fur.

Example 2. A sells a luxury fur to B and pays the appropriate luxury tax. Several months later, B expresses dissatisfaction with the fur. A agrees to take the fur back and refund 90% of the sales price to B. A is not entitled to a refund of the luxury tax.

Example 3. D uses a luxury automobile before there has been a first retail sale and pays the use tax. D later sells the automobile to L, an automobile lessor who intends to lease the vehicle to C under a qualified lease within the meaning of § 48.4011–6. Although D's sale to L would not be subject to the luxury automobile tax if the vehicle were new, a taxable use cannot be rescinded. Thus, D is not entitled to a refund of the luxury tax paid on the taxable use of the vehicle.

§ 48.4011–4 Sales price.

(a) *In general.* Except as otherwise provided in this section, the sales price of a taxable article is the total consideration paid for the article, whether that consideration is paid in money, services, or property.

(b) *Items included in sales price*—(1) *Charges incident to placing the article in condition ready for use.* The sales price of taxable article includes any charge incident to placing the article in a condition ready for use. These charges include charges for transportation, delivery, insurance, packaging, preparation, installation, and other expenses incurred by the purchaser in connection with putting the article into service.

(2) *Parts and accessories.* If parts and accessories for a taxable article are sold with, on, or in connection with the sale of the article, the sales price of the article includes the price of such parts and accessories.

(3) *Other taxes.* Except as provided in paragraph (c)(1) and (2) of this section, the sales price is not reduced by the amount of any Federal or State tax for which no charge is separately stated, and any separately stated charge for such taxes shall be treated as an amount paid for the article. For example, the sales price of a taxable article may reflect or include a separately stated charge for the Federal gas guzzler tax (section 4064), the ozone-depleting chemicals tax (section 4681), the taxes on motor fuels (sections 4081 and 4091), or the tax on large highway tires (section 4071).

(4) *Other services.* The sales price of a taxable article includes design services, brokers' commissions, and any goods or services that the purchaser is required to buy in order to purchase and use the article.

(c) *Items excluded from sales price.* The sales price does not include the following amounts:

(1) The amount of luxury tax imposed on the sale of the article.

(2) If stated as a separate charge, the amount of any retail sales tax imposed by any State or any political subdivision thereof or by the District of Columbia, whether the liability for that tax is imposed on the seller or purchaser.

(3) If stated as a separate charge, the amount of any title, registration, or license fee imposed on the purchaser by any State or any political subdivision thereof or by the District of Columbia.

(4) If stated as a separate charge, the cost of any insurance or extended warranty contract that the purchaser is not required to purchase in connection with the purchase of the article.

(5) The amount of any rebate or price adjustment that is paid to the purchaser of the article.

(6) In the case of a taxable vehicle, the value of any component of the vehicle if—

(i) The component is furnished by the first user of the vehicle and

(ii) The component was used before it was so furnished.

(d) *Treatment of trade-ins.* If, in connection with the sale of a taxable article, a seller receives property from the purchaser in exchange or as partial consideration, the fair market wholesale value of such property shall be treated as consideration paid by the purchaser. The luxury tax on the sale shall be computed on the basis of the full price of the article sold, including the fair market wholesale value of the property received from the purchaser. The property received from the purchaser is valued at its fair market wholesale value, even if a greater amount is allowed by the seller against the list price of the taxable article. For example, if a boat with a list price of $130,000 is purchased for $90,000 in cash plus a used boat with a fair market wholesale value of $38,000, the luxury boat tax is computed on a price of $128,000.

(e) *Treatment of credit card sales.* The luxury tax shall be computed on the basis of the full price of the article sold, unreduced by the seller's cost of accepting payment by credit card (e.g., the credit card company's "holdback") or by personal check (e.g., lead-debt expense).

(f) *Price used where sale not made at arm's length*—(1) *In general.* In the case of any taxable article sold (otherwise than through an arm's length transaction) at less than the fair market retail price, the luxury tax shall be computed on the basis of the price for which similar articles are sold at retail in the ordinary course of trade.

(2) *Sales not made through arm's length transactions.* A taxable article is not sold through an arm's length transaction if—

(i) The seller and purchaser (the parties to the sale) are related persons;

(ii) One of the parties to the sale is controlled (in law or in fact) by the other, or there is common control, whether or not that control is actually exercised to influence the sale price; or

(iii) The sale is made pursuant to special arrangements between the seller and purchaser that are not available to ordinary retail purchasers.

(3) *Price at which similar articles are sold at retail in the ordinary course of trade*—(i) *In general.* The rules of paragraphs (a) through (e) of this section shall apply in determining the price at which similar articles are sold at retail in the ordinary course of trade.

(ii) *Special rule for retailers.* If the seller of the taxable article (or a related person) regularly sells similar articles in arm's length transactions at retail, the luxury tax computation may be based on that retailer's lowest established retail price in effect at the time of the sale at less than arm's length.

(iii) *Special rule for manufacturers, producers and importers.* If the seller of the taxable article (or a related person) does not regularly sell similar articles in arm's length transactions at retail, the luxury tax computation shall be based on a presumptive retail price constructed under the rules of paragraph (g) of this section.

(g) *Presumptive retail sale price if tax paid by manufacturer, producer or importer*—(1) *In general.* If a manufacturer, producer, or importer is liable for a tax imposed by subchapter A of chapter 31, rules similar to the rules of §§ 145.4052–1(d)(2) and (d)(3)(ii) shall apply.

(2) *Presumed markup percentages.* For purposes of applying the rules of § 145.4052–1(d)(2) to this section, the term "presumed markup percentage" shall mean—

(i) In the case of a luxury automobile, 7.5 percent;

(ii) In the case of luxury boat, 4 percent;

(iii) In the case of a luxury aircraft, 4 percent;

(iv) In the case of luxury jewelry, 15 percent;

(v) In the case of a luxury fur, 15 percent.

(3) *Presumptive retail price adjusted*—(i) *In general.* The presumptive retail price of an article, as determined under paragraphs (g) (1) and (2) but without regard to this paragraph (g)(3), shall be reduced by the excess of—

(A) The sales price that would (but for this paragraph (g)) be determined under this section; over

(B) The price at which the manufacturer, producer or importer regularly sells similar articles to retailers in the ordinary course of trade, or increased by the excess of paragraph (g)(3)(i)(B) over paragraph (g)(3)(i)(A).

(ii) *Limitation on reductions.* Under paragraph (g)(3)(i), the presumptive retail price may never be reduced below the sales price that would (but for this paragraph (g)) be determined under this section.

§ 48.4011–5 Tax imposed on use of luxury article before there has been a first retail sale.

(a) *In general*—(1) *Imposition of tax.* Section 4011(b) imposes a tax (the use tax) on the taxable use of a taxable article if that use occurs after manufacture, production or importation and before there has been a first retail sale of the article.

(2) *Amount of tax*—(i) *In general.* The use tax is equal to the luxury tax that would have been imposed if, at the time of the taxable use, the article had been sold for the price at which similar articles are sold at retail in the ordinary course of trade (determined under the rules of § 48.4011–4(f)(3)).

(ii) *Special rule for importation for personal use.* If a person imports a taxable article for personal use, the price may be determined using the sum of—

(A) The actual (U.S. dollar) cost of the article including all adjustments required under the rules of § 48.4011–4; and

(B) All brokerage, transportation, and customs expenses.

(3) *Liability for tax.* The use tax is imposed on the person owning the article at the time the first taxable use of the article occurs.

(b) *Taxable use defined*—(1) *In general.* For purposes of this section, the term "taxable use" means any application of an article to its intended purpose, either permanently or temporarily, other than—

(i) A use for the purpose of display or preparation for sale;

(ii) A nontaxable use described in paragraph (b)(3) of this section; or

(iii) Use that satisfies the safe-harbor limitation of paragraph (b)(4) of this section.

(2) *Display or preparation for sale*—(i) *In general.* For purposes of this section, the following uses are treated as use for the purpose of display or preparation for sale:

(A) Exhibiting an article, either by itself or worn by a salesperson or model, in a place where it is being shown for sale. Examples include displaying articles in a retail store, shopping mall or trade show; salespersons wearing jewelry or furs in the seller's retail store; and models wearing jewelry or furs at a fashion show or trade show.

(B) Promoting the sale of an article by allowing its use at an event that is open to the general public. Examples include allowing an automobile to be driven as a pace car in a race or in a parade; sailing a boat in a regatta; and allowing jewelry or furs to be worn in a parade.

(C) Transporting a vehicle, whether or not under its own power, to a place where it will be exhibited for sale or to a place where it will be serviced, repaired, or inspected prior to sale. Examples include transporting a vehicle to another showroom; to a customer's home or office for a test drive; to exchange vehicles with another dealer; to a trade show or shopping mall where the vehicle will be displayed; to a body shop; to an accessory installer; and to a bank, insurance or emissions inspection.

(ii) *Use for personal benefit or other business purposes as a taxable use.* Any use that provides more than a *de minimis* element of business utility or personal benefit (other than in connection with display or preparation for sale), to the owner, consignee, or user of the article is not use for the purpose of display or preparation for sale.

(3) *Exceptions for certain nontaxable uses*—(i) *Exception for use in further manufacture.* Using a taxable article as material in the manufacture or production of, or as a component part of, another taxable article is not a taxable use.

(ii) *Exception for demonstration use of passenger vehicles.* Using a passenger vehicle as a demonstrator for a potential customer while the potential customer is in the vehicle is not a taxable use.

(iii) *Exception for test driving vehicles.* Test driving a passenger vehicle, boat or aircraft, either with or without a customer in the vehicle, to establish that the vehicle is operating properly or to familiarize customers or employees with the operation of the vehicle, is not a taxable use. However, a trip that involves transporting persons or property to any destination other than the point of origin is not a test drive. For example, a manufacturer can drive a car in performance or crash tests (a nontaxable use), but the use of cars driven home by company executives is taxable, even if those executives are required to write performance evaluations on the cars that they drive.

(4) *Safe harbor use of taxable vehicles by dealers*—(i) *In general.* No use of a passenger vehicle, boat, or aircraft by a person who regularly sells similar vehicles at retail shall be treated as a taxable use unless the total use of the vehicle exceeds the applicable safe harbor amount. The applicable safe harbor amount is—

(A) 200 miles in the case of a passenger vehicle;

(B) 100 hours of engine time in the case of a boat propelled by an engine or motor;

(C) 100 nautical miles in the case of a boat propelled by sail; or

(D) 30 hours of flight time in the case of an aircraft.

(ii) *Proof required if total use exceeds safe harbor amount.* If, in the case of a vehicle that has been used more than the applicable safe harbor amount, the dealer can prove, to the satisfaction of the Commissioner, that the total use of the vehicle (other than uses described in paragraph (b) (2) or (3) of this section) does not exceed the applicable safe harbor amount, then no use of the vehicle shall be treated as a taxable use.

(c) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. An automobile dealer uses a luxury passenger vehicle from inventory to transport customers between the dealer's repair department and the customers' homes or places of employment. This is a taxable use of the vehicle. If the odometer on the vehicle reads 225 miles, the dealer can only avoid the use tax by proving (through mileage logs or otherwise) that at least 25 of the miles are attributable to transporting the vehicle to the dealership, demonstrator uses, or other nontaxable uses described in paragraphs (b)(2) and (b)(3) of this section.

Example 2. An automobile dealer allows a salesperson to commute in a luxury passenger vehicle from inventory. This is a taxable use of the vehicle, despite the possibility that having the salesperson display the vehicle outside of the showroom may have a positive effect on sales. The compensatory nature of the use provides more than a *de minimis* element of business utility to the dealer and more than a *de minimis* element of personal benefit to the salesperson. As in Example (1), the dealer must be able to prove that any odometer

mileage over 200 miles is attributable to nontaxable uses in order to avoid the use tax.

Example 3. A purchases a new automobile while on vacation in Europe in July 1991. At the end of the vacation in August 1991, A imports the automobile into the United States and uses it as a personal vehicle. The retail value of the automobile, at the time A first uses it in the United States, is $43,000. Thus, A has imported and used a luxury automobile and is liable for the luxury autmobile tax.

(d) *Procedural rules.* For rules relating to the requirements for filing returns and for paying and depositing use tax, see 26 CFR part 40. See § 40.6011–2T(c) for special rules relating to one-time filers.

§ 48.4011–6 Special rules for payment of tax on qualified leases and installment sales.

(a) *Qualified leases*—(1) *Defined.* For purposes of this paragraph, the term "qualified lease" means any lease of a luxury boat or a luxury aircraft, and any long-term lease (as defined in section 4052(f)) of a luxury automobile.

(2) *General rules for payment of tax.* If a qualified lease of a taxable vehicle is treated as the first retail sale of that vehicle and the lessor does not make an election under paragraph (a)(4) of this section—

(i) The tax is imposed on each lease payment due under the lease during the initial term of the lease;

(ii) The tax is imposed on each payment when the payment is received; and

(iii) The amount of tax imposed on each payment is equal to the total tax imposed multiplied by the percentage obtained by dividing—

(A) The amount of the payment; by

(B) The aggregate amount of payments due under the lease during the initial term of the lease.

(3) *Liability for tax.* Taxes paid under the rules of this paragraph (a) shall be paid by the lessor whose lease of the vehicle is treated as a first retail sale.

(4) *Election to treat total tax as payable at inception of lease.* A lessor in a qualified lease may elect to pay the total tax imposed on a lease at the beginning of the lease term. If the lessor makes this election, the total tax is imposed at the inception of the lease. The election is made by depositing, paying, and reporting the tax in the same manner as tax would be deposited, paid, and reported for a nonqualified lease. The election may be made for any lease, and once made is irrevocable with respect to that lease.

(5) *Cancellation or disposition before total tax is paid.* If a qualified lease of a taxable vehicle is canceled, or the vehicle is sold or otherwise disposed of, before the total tax imposed on the qualified lease is paid, the balance of the tax is imposed on the date of the cancellation, sale, or disposition. For this purpose, the balance of the tax is the difference between the tax imposed on prior payments received under the lease and the total tax imposed on the lease.

(6) *Total tax defined.* The total tax imposed on the lease of a taxable vehicle is the amount of luxury tax that would have been imposed if, at the beginning of the lease term, the lessor had sold the vehicle for the lease price.

(7) *Determination of lease price.* The lease price is the lowest price for which the vehicle is sold by retailers in the ordinary course of trade. Such price shall be determined by including or excluding charges described in § 48.4011–4 in accordance with the rules of that section. The lowest price for which the vehicle is sold in the ordinary course of trade by retailers may be determined using one of the following methods:

(i) If the lessor (or a related person) regularly sells similar vehicles in arm's length sales at retail, the lease price may be the comparable sales price for the vehicle on the first day of the lease term (see § 48.4011–4(f)(3)(ii)).

(ii) If neither the lessor (nor any related person) regularly sells similar vehicles in arm's length sales at retail, the lease price may be the sum of the price for which the lessor purchased the vehicle in an arm's length transaction at retail, plus the cost of any parts and accessories installed on the vehicle by the lessor (or by the lessor's agent). If the lessor did not purchase the vehicle in an arm's length transaction at retail, the preceding sentence shall be applied by substituting a presumptive retail price determined under the rules of § 48.4011–4(g) for the price for which the lessor purchased the vehicle.

(iii) If the lessor purchases the vehicle at an arm's length retail price, such as where the lessee negotiates with a retail vendor the price for which the lessor acquires the vehicle, the lease price may be the gross capitalized cost of the vehicle.

(8) *Examples.* The provisions of this paragraph are illustrated by the following examples:

Example 1. A goes to dealer D to lease a luxury automobile. D enters into a one year lease with A, and A makes the first of 12 equal lease payments and takes possession of the vehicle. D, who does not elect to have the total luxury tax liability imposed on the first lease payment, pays one-twelfth of the total tax. A never makes the second lease payment. After two additional months of nonpayment, D terminates the lease under a forfeiture clause and has the vehicle repossessed. When the lease is terminated, D owes the remaining eleven-twelfths of the luxury tax.

Example 2. Dealer D purchases a luxury automobile from manufacturer M for purposes of resale. Before the automobile is sold, D rents the vehicle to a customer whose own vehicle was in an accident and needs several days of body work and repainting. The rental is a nonqualified lease, which is treated as a sale of the vehicle at retail. D is liable for the luxury automobile tax on the price at which similar vehicles are sold by retailers in the ordinary course of trade. Because D is a retail dealer, that price can be determined as the price for which D sells similar vehicles in the ordinary course of trade. If M had failed to obtain proof sufficient to establish that an exemption applied to the sale of the vehicle to D, M would have been liable for the luxury automobile tax based on the presumptive retail price determined under § 48.4011–4(g).

(b) *Installment sales*—(1) *In general.* Rules similar to the rules of paragraphs (a)(2) through (a)(5) of this section apply in the case of—

(i) A contract for the sale of a taxable vehicle wherein it is provided that the price will be paid in installments and title to the article will not pass to the purchaser until a future date, notwithstanding partial movement by installments;

(ii) A conditional sale wherein it is provided that title passes to the purchaser, but reverts to the seller if future payments are not made by the purchaser; or

(iii) A chattel mortgage arrangement wherein it is provided that the sales price is paid in installments and the seller retains a security interest in the article until all of the purchaser's payments are made.

(2) *Computation of total tax.* The total tax imposed on a sale to which paragraph (b)(1) of this section applies is based on the sales price determined under § 48.4011–4.

(3) *Sales of installment accounts.* If an installment account, with respect to which tax is being paid by the seller under rules similar to the rules in paragraph (a)(2) of this section, is sold or otherwise disposed of, rules similar to the rules of paragraph (a)(5) of this section shall apply.

§ 48.4011–7 Rules relating to exemption certificates.

(a) *Time and manner of certification.* If a person wishes to rely on a certification from a customer or another person for purposes of establishing that a sale or other transaction is not subject to tax under subchapter A of chapter 31 of the Code because of one of the definitions, exemptions, exclusions or exceptions set forth in the regulations, or for purposes of helping to establish

the regulations, or for purposes of helping to establish the amount of the tax on the sale or other transaction, the person may secure a certificate to that effect from the customer or other person. The certificate must be secured prior to or at the time of the transaction. If all transactions with a particular customer are not subject to tax because of a particular definition, exemption, exclusion or exemption, a continuing certificate may be secured that will cover all transactions between the parties for a period of up to three years. The certification shall be in written form and shall be signed by the customer or other person, but it is not required to take any particular form, and it need not be a separate document. For example, the certification can be included in a written agreement between a seller and its authorized wholesaler, dealer or franchise, in a contract of sale or lease agreement, or in any other document that the customer executes in connection with the transaction.

(b) *Good faith reliance on certificates.* Notwithstanding any other provision of this section or any other regulation under subchapter A of chapter 31 of the Code, a person may rely only on a certificate that is accepted in good faith. See Code section 4221(c). For example, if, at the time of a sale, the seller accepting the certificate has reason to believe that the transaction may not satisfy the specific definition, exemption, exclusion or exception indicated by the purchaser on the certificate, the seller is not considered to have accepted the certificate in good faith. If a certificate is not considered to have been accepted in good faith, the person who is otherwise responsible for paying the luxury tax must establish by other evidence that will satisfy the Commissioner that the transaction was not subject to tax under subchapter A of chapter 31.

§ 48.4011–8 Effective date and miscellaneous issues.

(a) *Effective date*—(1) *In general.* The regulations under subpart B of 26 CFR part 48 are effective for sales or uses occurring on or after January 1, 1991.

(2) *Incomplete articles purchased before January 1, 1991.* The sale of an incomplete article prior to January 1, 1991, will not be considered a first retail sale of the article unless the incomplete article is a taxable article on the date of sale.

(b) *Exception for binding contracts.* No tax is imposed under subchapter A of chapter 31 or the regulations thereunder on the sale of any article after December 31, 1990, if the purchaser held on September 30, 1990, a contract (which was binding on that date and at all times thereafter until the sale occurs) for the sale of the article.

(c) *Exchanges.* No tax is imposed under subchapter A of chapter 31 or the regulations thereunder on the sale of an article in exchange for an article of the same type, character, and quality originally sold by the same seller, and without payment (or refund) of other consideration.

§ 48.4012–1 Termination.

The regulations under subpart B of 26 CFR part 48 shall not apply to any sale or use after the date specified in section 4012.

Fred T. Goldberg, Jr.

Commissioner of Internal Revenue.

[FR Doc. 89–30358 Filed 12–28–90; 12:57 pm]

BILLING CODE 4830–01–M

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26 CFR Part 52

[PS–97–90]

RIN 1545–AT32

Excise Tax on Chemicals That Deplete the Ozone Layer and on Products Containing Such Chemicals; Tax Imposed on Additional Chemicals

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 of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the tax on chemicals that deplete the ozone layer and on products containing such chemicals. The text of those 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 received before March 4, 1991.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044 (Attention: CC:CORP:T:R (PS–97–90), room 4429). In the alternative, comments and requests may be hand delivered to: CC:CORP:T:R (PS–97–90), Internal Revenue Service, room 4429, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, (202) 566–4475 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend the Environmental Tax Regulations (26 CFR part 52) relating to sections 4681 and 4682 of the Internal Revenue Code. The temporary regulations contain rules relating to the tax on chemicals that deplete the ozone layer and on products containing such chemicals. These rules reflect changes to the tax made by the Revenue Reconciliation Act of 1990.

This document proposes to adopt the temporary regulations as final regulations. Accordingly, the text of the temporary regulations serves as the comment document for this notice of proposed rulemaking. For the text of the temporary regulations, see T.D. 8327 published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains the proposed and temporary rules.

Special Analyses

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

Comments and Requests for a Public Hearing

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

Drafting Information

The principal author of these regulations is Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However,

personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 89–30365 Filed 12–28–90; 1:08 pm]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Arkansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; Reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions pertaining to a previously proposed amendment to the Arkansas permanent regulatory program (hereinafter referred to as the Arkansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions pertain to an exemption for the extraction of coal incidental to the extraction of other minerals. The amendment is intended to revise the State program to be consistent with corresponding Federal regulations.

This notice sets forth the times and locations that the Arkansas program and proposed amendment to that program are available for public inspection, and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4 p.m., c.s.t. January 17, 1991.

ADDRESSES: Written comments should be mailed or hand delivered to James H. Moncrief at the address listed below.

Copies of the Arkansas program, the proposed amendment. and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 550, Tulsa, OK 74135, Telephone: (918) 581–6430.

Arkansas Department of Pollution Control and Ecology, Mining Reclamation Division, 8001 National Drive, Little Rock, AR 72209, Telephone: (501) 570–2170.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Director, Tulsa Field Office, on telephone number (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Arkansas Program

On November 21, 1980, the Secretary of the Interior conditionally approved the Arkansas program. General background information on the Arkansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Arkansas program, were published in the November 21, 1980, **Federal Register** (45 FR 77003). Subsequent actions concerning Arkansas program and program amendments are at 30 CFR 904.12, 904.15, and 904.16.

II. Proposed Amendment

By letter dated September 20, 1990 (administrative record No. AR–411), Arkansas submitted amendment to its program pursuant to SMCRA, concerning an exemption for the extraction of coal incidental to the extraction of other minerals. Arkansas submitted the proposed amendment in response to a February 7, 1990, letter that OSM sent to Arkansas in accordance with 30 CFR 732.17(c).

OSM published a notice in the October 4, 1990, **Federal Register** (55 FR 40677) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (administrative record No. AR–430). The public comment period ended November 5, 1990. During its review of the amendment, OSM identified concerns relating to ASCMRC 700.11(a)(4), exemption for extraction incidental to the extraction of other minerals; ASCMRC 702.5(a) and 702.11(a)(1) and (2), definition of cumulative measurement period; ASCMRC 702.11(d), application requirements and procedures; and ASCMRC 702.17(a), revocation and enforcement. OSM notified Arkansas of the concerns by letter dated November 14, 1990 (administrative record No. AR–431). Arkansas responded in a letter dated December 10, 1990, by submitting an amendment package (administrative record No. AR–432) which revised these proposed rules.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Arkansas program amendment to provide the public an opportunity to reconsider the adequacy of the amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Arkansas program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Tulsa Field Office will not necessary be considered in the final rulemaking or included in the administrative record.

List of Subjects in 30 CFR Part 904

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 19, 1990.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 90–30567 Filed 12–31–90; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3895–4]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: On November 18, 1988, March 9, 1990, and October 23, 1990, the Indiana Department of Environmental Management (IDEM) submitted corrections to its Volatile Organic Compound (VOC) Rules to USEPA as proposed revisions to Indiana's State Implementation Plan (SIP) for ozone. These revisions correct the deficiencies in Indiana's VOC rules that were identified in a June 17, 1988, follow-up letter to USEPA's May 26, 1988, notification to Indiana under section 110(a)(2)(H) of the Clean Air Act (Act), as amended, 42 U.S.C. 7401 et. seq., that Indiana's ozone SIP was substantially inadequate.

Some of these rules have been fully adopted by Indiana and some have only been preliminarily adopted by the Indiana Air Pollution Control Board (Board). Those rules that have only been preliminarily adopted have been submitted for parallel processing. The preliminarily adopted rules must be promulgated by Indiana before they can ultimately be approved by USEPA.

USEPA is proposing to approve all of these rules. In those cases in which Indiana has submitted more than one version of a rule, the most current version is the one being proposed for approval. The purpose of this notice is to discuss USEPA's review of these revisions and to solicit public comments on this rulemaking action.

DATES: Comments on this revision and on the proposed USEPA action must be received by February 1, 1991.

ADDRESSES: Copies of the SIP revision request and USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Steve Rosenthal at (312) 886–6052, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Written comments should be sent to:

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Air and Radiation Division (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6052.

SUPPLEMENTARY INFORMATION:

Background

Under section 107 of the Act, as amended in 1977, USEPA designated certain areas in each State as not attaining the National Ambient Air Quality Standards (NAAQS) for ozone. For Indiana, see 43 FR 8962 (March 3, 1978), 43 FR 45993 (October 5, 1978), and 40 CFR 81315. For these areas, section 172(a) of the Act, as amended in 1977, required that the State revise its SIP to provide for attaining the primary NAAQS as expeditiously as practicable, but not later than December 31, 1982.[1] Part D allowed USEPA, though, to grant extensions of up to December 31, 1987, to those States that could not demonstrate attainment of the ozone standard by December 31, 1982, if certain conditions were met by the State in revising its air pollution control program. Indiana requested, and received, an extension to December 31, 1987, for achieving the ozone NAAQS for four counties: Clark, Floyd, Lake, and Porter.[2]

Section 172 (b) and (c) of the Act, as amended in 1977, require that for stationary sources, an approvable SIP must include legally enforceable requirements reflecting the application of reasonably available control technology (RACT) [3] to sources of VOC. In partial response to the requirement for RACT VOC rules, the State of Indiana has submitted rules covering all required source categories in Indiana. The USEPA approved or conditionally approved portions of Indiana's 1979 plan in four rulemaking actions: January 2, 1981, (46 FR 36); February 11, 1982, (47 FR 6274); October 22, 1982, (47 FR 47552) and January 18, 1983, (48 FR 2124). This included USEPA's approval of Indiana's RACT I and RACT II regulations and Indiana's 1979 ozone SIP.[4]

On May 26, 1988, Valdas V. Adamkus, Regional Administrator, USEPA, Region V, notified Governor Robert D. Orr that the Indiana SIP was substantially inadequate to achieve the National Ambient Air Quality Standards (NAAQS) for ozone in parts of Indiana. This letter to the Governor further stated that Indiana was required under the Act, as amended in 1977, to correct the deficiencies and inconsistencies in its existing VOC regulations. USEPA published an information notice in 53 FR 34500 (September 7, 1988) on the call for a SIP revision and on guidance documents, including the May 25, 1988, document, "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations" (Bluebook).

In an enclosure to the June 17, 1988, SIP call follow-up letter to Indiana, USEPA Region V identified all known deficiencies and inconsistencies in Indiana's existing VOC stationary source RACT regulations. That enclosure, which is in the docket, lists 18 deficiencies, based on consistency with the control technique guideline (CTG) documents and other relevant guidance.

The 1990 Amendments to the Act, signed November 15, 1990, require States with ozone nonattainment areas to submit a SIP revision within 6 months of enactment to correct or add requirements concerning RACT as were required under section 172(b) before the 1990 Amendments unless submitted before enactment (section 182(a)(2)(A), as added by Pub. L. 101–549, section 103).

State Submittals

Indiana has submitted the following revisions to its ozone rules in response to the 1988 SIP call. The Indiana submittal also serves to meet the State's obligation under section 182(a)(2)(A) of the 1990 Amendments to submit SIP corrections concerning RACT. In addition, the Indiana submittal, and the proposed EPA approval, is consistent with USEPA's obligations under the Settlement Agreement in *Wisconsin v. Reilly* [5] Indiana has divided its

[1] The requirements for an approvable SIP are described in a "General Preamble" for part D rulemaking published at 44 FR 20372 (April 4, 1979), 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979), and 44 FR 67182 (November 23, 1979).

[2] On January 22, 1981, (46 FR 7182), USEPA published guidance for the development of 1982 ozone SIPS in "State Implementation Plans: Approval of 1982 Ozone and Carbon Monoxide Plan Revisions for Areas Needing an Attainment Date Extension".

[3] A definition of RACT is contained in a December 9, 1976, memorandum from Roger Strelow, former Assistant Administrator of Air and Waste Management and is cited in a General Preamble-Supplement on CTGs, published at 44 FR 53761, 53762 (September 17, 1979). RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

The USEPA published Control Technique Guidelines (CTGs) in order to assist the State in determining RACT. The CTGs provide information on available air pollution control techniques and provide recommendations on what the USEPA considers the "presumptive norm" for RACT.

All other sources which are not covered by Group I, II, or III CTGs are referred to as "non-CTG" sources. "Non-CTG major sources" are sources which have the potential to emit more than 100 tons of VOC per year and for which a CTG has not been published.

[4] On September 2, 1982, December 2, 1983, February 8, 1985, July 3, 1985, and December 13, 1985, Indiana submitted draft and final versions of its 1982 supplemental Part D ozone plan. USEPA disapproved this plan for Lake and Porter Counties on November 18, 1988, (53 FR 46608).

[5] On April 1, 1987, the State of Wisconsin filed a complaint against Lee M. Thomas, then Administrator of USEPA, in the United States District Court for the Eastern District of Wisconsin (now *Wisconsin v. Reilly*, Case No. 87–C–0395). In that action Wisconsin sought a judgment that USEPA:

a. Be required to finally approve or disapprove the proposed 1982 revisions to the ozone State Implementation Plans for northeastern Illinois and northwestern Indiana;

b. Be required to promulgate revisions to the Illinois and Indiana ozone implementation plans in conformance with section 172 (b) and (c) of the federal Clean Air Act; and

c. Be required to impose and enforce a moratorium on the construction or modification of major stationary source of ozone in the northeastern Illinois and northwestern Indiana ozone nonattainment areas.

Illinois, Wisconsin, and USEPA agreed to, *inter alia*, the following USEPA requirements, in the *Wisconsin v. Reilly* Settlement Agreement, which was approved by the court on November 6, 1989:

Continued

submittal of rule corrections into three groups:

1. The first group of corrections was promulgated [6] by the State and formally submitted to USEPA on November 18, 1988. They were reviewed in a January 30, 1989, USEPA technical support document (TSD).

2. The second group of corrections was also promulgated by the State. It consists of a March 9, 1990, submittal that was reviewed in an October 17, 1990, TSD.

3. The third group of corrections, which was submitted on October 23, 1990, includes promulgated rules (that were previously submitted as finally adopted rules on March 21, 1990) and rules that were preliminarily adopted on October 3, 1990. The preliminarily adopted rules correct residual deficiencies in Indiana rule corrections that have already been promulgated. The October 23, 1990, submittal also includes VOC RACT rule corrections that had been previously submitted and reviewed (and in some cases withdrawn).

On September 17, 1990, IDEM withdrew all but 326 Indiana Administrative Code (IAC) 8–1–0.5 and 8–2–11 from its November 18, 1988, submittal and withdrew 8–1–2 from its March 9, 1990, submittal. However, the corrections made in the withdrawn sections are incorporated in further revised sections submitted on March 9, 1990, March 21, 1990, and October 23, 1990.

USEPA's Analysis of State Submittals

A description of the November 18, 1988, March 9, 1990, and October 23, 1990, submittals is provided below in the order in which they were submitted. A description of the corrections made in the withdrawn sections is also provided because these corrections have been incorporated in the further revised sections submitted on March 9, 1990, and March 21, 1990. Section 182(a)(2)(A) of the 1990 Amendments, requires States to submit SIP corrections to include RACT requirements as were required under section 172(b) of the Act as in effect before the 1990 Amendments as interpreted in USEPA guidance. Public Law 101–549, section 103. Because the Indiana SIP submittal is consistent with the RACT requirements, as interpreted in USEPA guidance, USEPA is proposing to approve the SIP submittal as adequate to meet the Act as amended in 1990.

A. Review of November 18, 1988, Submittal

1. *"Nonphotochemically reactive hydrocarbon" definition*—326 IAC 1–2–48 has been revised to state that compliance calculations for coatings expressed as "pounds VOC/gallon coating (less water)" should treat nonphotochemically reactive compounds as water for purposes of calculating the "less water" portion of the coating composition. This requirement is consistent with USEPA guidance and is, therefore, approvable. (Note: This rule was withdrawn in favor of a revised version submitted on March 9, 1990).

2. *"Volatile organic compound (VOC)" definition*—326 IAC 1–2–90 has been revised to contain the following definition of Volatile Organic Compound:

> Any organic material which participates in atmospheric photochemical reaction; that is, any organic compound other than those which are listed in 326 IAC 1–2–48 (Nonphotochemically reactive hydrocarbon). VOC content may be measured by ASTM procedure, D2359–81 1986, annual edition, copyright 1986, and no later revisions, or by an approved equivalent method. The equivalent method, however, may also measure nonreactive organic compounds. In such cases, an owner or operator may exclude the nonreactive organic compounds when determining compliance with a standard.

Although this definition is generally consistent with USEPA's model definition (in the Bluebook), and should be approved, it contains a provision for the use of an "approved equivalent method" which USEPA does not consider approvable because it would allow the State discretion to decide what level of control is equivalent to RACT, without specifying that USEPA must approve the State's use of that discretion. (Note: This rule was withdrawn in favor of a revised version, which corrects the above mentioned deficiency, submitted on October 23, 1990.)

3. *Definition of coating*—A new section (326 IAC 8–1–0.5) has been created to establish the following general definition of "Coating": "Coating shall mean the application of protective, functional, or decorative films." This provides a clear, complete definition of coating and is, therefore, approvable.

4. *Compliance methods*—326 IAC 8–1–2 has been revised to clarify requirements and specify additional recordkeeping requirements. Because the rule is still consistent with USEPA's May 25, 1988, guidance (Bluebook), the revisions are approvable. (Note: This rule was withdrawn in favor of a revised version submitted on October 23, 1990.)

5. *Testing procedures*—326 IAC 8–1–4 has been revised to update the test method for determining VOC content of coatings, add a procedure for calculating percent solids of coatings and add provisions for equivalent methods. The updated test method for VOC content and the method specified for percent solids are the methods approved by USEPA. In addition, the revised rule requires sources to document that the coating manufacturers used an acceptable test method to determine VOC content and percent solids. All of these revised rules state that the State or USEPA may verify results and that results obtained by the State or USEPA will take precedence. Because these revised rules are consistent with USEPA's May 25, 1988, guidance in the Bluebook, USEPA is proposing their approval.

It should be noted, however, that other rules concerning test methods do not specify that results may be verified. In addition, the rules do not specify a test method to be used to measure the efficiency of add-on control equipment used by surface coating sources. Finally, as discussed in item number 2 above, provisions for equivalent methods are not approvable. (Note: This rule was withdrawn in favor of a revised version, which corrects the above mentioned deficiencies, submitted on October 23, 1990.)

6. *Paper coating operations*—326 IAC 8–2–5 has been revised to extend the applicability of paper coating regulations to saturation processes and coating of plastic and metal foil. Because this rule is now consistent with USEPA's May 25, 1988, guidance in the Bluebook, USEPA is proposing its approval.

"(B)y June 30, 1990, to propose as Federal measures RACT rules for Indiana in accordance with the Bluebook, to remedy the deficiencies described in Exhibit E, for which Indiana has not submitted to USEPA by March 18, 1990, RACT rules concerning such deficiencies and, consistent with Federal laws (including the Administrative Procedure Act), to promulgate rules by December 31, 1990. USEPA shall not be obligated to promulgate as Federal measures any RACT rule that Indiana has submitted to USEPA and which USEPA has proposed for approval by December 31, 1990."

Exhibit E in the Settlement Agreement is a list of the 15 outstanding VOC deficiencies as of April 1989. The decrease in the number of deficiencies (from 18 to 15) is due to VOC rule corrections made and submitted to USEPA by Indiana prior to the Settlement Agreement. The deficiencies in Exhibit E are listed in a table in the conclusion section of this proposal.

[6] Rules are first presented for the Board's approval. The State initiates a formal rulemaking process by developing a *preliminarily adopted* rule which is first published in the Indiana Register as a proposed rule. A public hearing process follows resulting in the Board's *finally adopted* version which becomes the rule. This finally adopted version requires the sequential signatures of the Attorney General, Governor and Secretary of State. Once completed, the rule becomes *promulgated* and is published in Indiana's Register.

It should be noted, however, that this rule still contains a deficiency which was identified in the June 17, 1988, letter. In particular, the rule exempts single pieces of equipment which conduct rotogravure or flexographic printing operations in line with surface coating operations. The rule should specify that such an exemption is allowed only for sources subject to the graphic arts rule. (Note: This rule was withdrawn in favor of a revised version, which corrects the above mentioned deficiency, submitted on March 9, 1990.)

7. Fabric and vinyl coating—326 IAC 8–2–11 has been revised to extend the applicability of fabric coating regulations to saturation operations, to extend the applicability of vinyl coating regulations to the application of "functional" coatings and to specify that organisol and plastisol cannot be used to bubble emissions from vinyl printing and topcoating. Because these revisions are consistent with USEPA's May 25, 1988, guidance, they are approvable.

B. Review of March 9, 1990, Submittal

1. *Rule 326 IAC 1–2–14*—This rule has been amended to modify the definition of "coating line." The prior definition was deficient because it could exempt from control coating lines without bake ovens. USEPA does not consider the revised definition to be approvable because it could be interpreted to mean that to be a coating line, the following equipment must be included: spray booths, flow coaters, flash-off areas, air dryers, and ovens. This definition could be corrected by inserting "one or more of the following" between "limited to" and "spray booths." This deficiency was corrected in Indiana's October 23, 1990, submittal.

2. *Rule 326 IAC 1–2–48*—This rule was amended to include four new compounds, which USEPA considers negligibly photochemically reactive, in the definition of "non-photochemically reactive hydrocarbons." These compounds have been classified by USEPA as "negligibily photochemically reactive" and, therefore, adding these compounds to Indiana's "non-photochemically reactive hydrocarbon" definition is approvable.

3. *Rule 326 IAC 8–1–2 (Compliance Methods)*—This rule has been amended to restrict seasonal exemptions, from VOC control requirements, to sources controlled with a natural gas fired incinerator. The rule previously allowed seasonal control of VOC emission sources controlled by carbon adsorption, incineration, or any control method which consumes energy. This revision is consistent with USEPA guidance and is, therefore, approvable. This revision corrects deficiency number 1 in Exhibit E to the Settlement Agreement. (Note: This rule was withdrawn in favor of a revised version submitted on October 23, 1990.)

4. *Rule 326 IAC 8–2–5 (Paper Coating Operations)*—This rule previously exempted from paper coating emission limits single pieces of equipment which conduct rotogravure or flexographic printing operations in line with surface coating operations. This rule has been revised to specify that only single pieces of equipment that meet the emission limitations in 326 IAC 8–5–5 (Graphic Arts Operations) may be exempted from the paper coating limits. The rule eliminates a previously identified loophole (and deficiency number 3 in Exhibit E) and is, therefore, approvable.

C. Review of October 23, 1990, Submittal

The rules that were submitted on October 23, 1990, include those finally adopted rules that were previously submitted to USEPA on March 21, 1990 (and have subsequently been promulgated), and those rules that were preliminarily adopted on October 3, 1990, to correct residual deficiencies in Indiana rule corrections that have already been promulgated.[7] The preliminarily adopted rules have been submitted for parallel processing. Unless otherwise indicated, the VOC rule revisions discussed below have been promulgated by Indiana.

1. *Rule 326 IAC 1–2–14 "Coating line" definition—Preliminarily Adopted* language has been added that clarifies that any operation utilizing one or more of the listed equipment would qualify as a coating line. This revision eliminates the deficiency in the March 9, 1990, submittal. The revised definition cannot be interpreted to mean that all of the listed equipment must be included in order to be a "coating line". This definition is approvable and eliminates deficiency number 12 in Exhibit E of the settlement agreement.

2. *Rule 326 IAC 1–2–18.5 "Cold cleaner degreaser" definition; Rule 326 IAC 1–2–21.5 "Conveyorized degreaser" definition; Rule 326 IAC 1–2–29.5 "Freeboard height" definition; Rule 326 IAC 1–2–29.6 "Freeboard ratio" definition; Rule 326 IAC 1–2–49.5 "Open top vapor degreaser" definition*—Rule 326 IAC 1–2 is amended by adding five new definitions related to organic solvent degreasing operations. Three types of degreasers are defined and two terms related to cold and open top vapor degreasers are also defined. These definitions clarify Indiana's degreasing regulations and are consistent with USEPA policy. These definitions are, therefore, approvable.

3. *Rule 326 IAC 8–1–1.1 Applicability of rule—Preliminarily Adopted* provisions have been added that require facilities once subject to the control requirements of any of the VOC rules to continue to remain subject to such rules even if emissions are subsequently reduced below the applicability level. This "once-in-always-in" requirement is consistent with USEPA applicability criteria in the Bluebook and is, therefore, approvable.

4. *Rule 326 IAC 1–2–90 "Volatile Organic Compound (VOC)" Definition*—This revision amends 326 IAC 1–2–90 by requiring that VOC be determined in accordance with 326 IAC 8–1–4 (testing procedures). The provision allowing use of an "approved equivalent method" has been deleted from 326 IAC 1–2–90. This revision corrects the deficiency in Indiana's November 18, 1988, submittal and deficiency number 11, in Exhibit E of the Settlement Agreement and is, therefore, approvable.

5a. *Rule 326 IAC 8–1–2 Compliance methods*—This section has been amended to incorporate USEPA's December 1988 "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light Duty Truck Topcoat Operations" (EPA–450/3–88–018). This section has also been amended to require that equivalency calculations be performed on a solids basis. In addition, the procedure for calculating the overall capture system and control device efficiency required to comply with surface coating limits has been specified. Use of USEPA's topcoat protocol is required when demonstrating compliance with the equivalent emission limit for automobile and light duty topcoating operations. Indiana's formula for calculating the equivalent emission limit, in terms of pounds of VOC per gallon of coating solids as applied, is consistent with USEPA policy and corrects deficiency number 10 in Exhibit E of the Settlement Agreement. These revisions to 326 IAC 8–1–2 are approvable.

5b. *Rule 326 IAC 8–1–2 Compliance methods*—The term "thermal or catalytic incineration" has been *preliminarily adopted* and added to 8–1–2(a)(2) to clarify their use as a means of compliance with the requirements of Article 8. Both thermal and catalytic incineration are valid control

[7] To help distinguish between sections which have been changed, the paragraph describing the promulgated rule has an "a" after the number and the paragraph describing the preliminarily adopted corrected rule(s) has a "b" after the number.

techniques. This revision is, therefore, approvable.

6a. *Rule 326 IAC 8–1–4 Testing procedures*—USEPA approved methods have been added for testing coatings in order to determine their compliance with the limitations in Article 8 and for determining the efficiency of add-on control equipment. USEPA approved methods for determining the emissions of gasoline from a vapor recovery system and for determining the VOC emissions from solvent degreasing operations have also been added. In addition, 326 IAC 8–1–4(1) has been added which allows IDEM or USEPA to verify any test results submitted by a source. In the event of any inconsistency between test results, IDEM's or USEPA's test results will govern. The use of equivalent methods is allowed provided they are submitted to USEPA as a SIP revision. The revisions to 326 IAC 8–1–4 consist of USEPA approved methods and they correct the deficiencies in Indiana's November 18, 1988, submittal. These revisions correct deficiency number 13 in Exhibit E and are approvable.

6b. *Rule 326 IAC 8–1–4 Testing procedures—Preliminarily Adopted* revisions to 8–1–4(h) and (i) state that the appropriate test methods "shall", instead of "may", be used for the source categories listed in (h) and (i). These revisions strengthen the requirement that the appropriate test methods be used and are, therefore, approvable.

7a. *Rule 326 IAC 8–2–1 Applicability*—326 IAC 8–2–1(a)(2) specifies 15 pounds VOC per day (lbs/day) of actual emissions as the applicability cutoff. 326 IAC 8–2–1(b) specifies that facilities described in (a)(2) "shall attain compliance with this rule no later than July 1, 1991". The 15 lbs/day actual emissions cutoff must be revised to 15 lbs/day before add-on control. The July 1, 1991, compliance date allows about 1 year (from promulgation of Indiana's rule) for sources to achieve compliance and is, therefore, expeditious and approvable.

7b. *326 IAC 8–2–1 Applicability*—This *Preliminarily Adopted* language specifies that the 15 lbs/day actual VOC emissions cutoff is to be based on emissions "before add-on control." As a result of this revision, Indiana's applicability cutoff level for coatings is consistent with USEPA guidance and is, therefore, approvable. These revisions to 8–2–1 correct deficiency number 2 in Exhibit E.[8]

8. *326 IAC 8–2–9 Miscellaneous metal coating operations*—Exemptions for maintenance coatings of production equipment, the application and preparation of adhesives, the application of lubricants, and chromium plating of plastics are eliminated as of July 1, 1991. Elimination of these exemptions is consistent with USEPA policy (the exemptions are not contained in the CTG) and is, therefore, approvable. This revision corrects deficiency number 4 in Exhibit E.

9. *326 IAC 8–3–1—Organic Solvent Degreasing Operations—Applicability*—The applicability criteria for organic solvent degreasing operations is changed from degreasers at plants with potential emissions of 100 tons VOC per year or greater to: (1) Cold cleaner degreasers without remote solvent reservoirs; (2) open top vapor degreasers with an air to vapor interface of one square meter or greater; and (3) conveyorized degreasers with an air to solvent interface of two square meters or greater. Sources subject to this new cutoff must comply with the degreasing requirements by July 1, 1991. The revised applicability criteria is consistent with USEPA policy and is, therefore, approvable. This revision corrects deficiency number 6 in Exhibit E.

10a. *326 IAC 8–3–5 Cold cleaner operation and control requirements; 326 IAC 8–3–6 Open top vapor degreaser operation and control requirements; 326 IAC 8–3–7 Conveyorized degreaser operation and control requirements.*—These sections clarify operational requirements and add the control requirements required by USEPA guidance. Although these sections generally follow USEPA guidance, they have the following differences:

- 8–3–5(a)(5)—When heating the solvent above 120° Fahrenheit the degreaser needs to be equipped with one of several listed control devices.
- 8–3–5(a)(5)(C)—Other systems of equivalent control need to be submitted to USEPA as a SIP revision.
- 8–3–6(a)(4)(A) and (B)—These two control requirements need to be combined to form *one* control device alternative (listed under 6(a)(4)).
- 8–3–6(a)(4)(F)—Other systems of demonstrated equivalent control need to be submitted to USEPA as a SIP revision.
- 8–3–6(b)(5)—The prohibition on loading the degreaser needs to be changed from preventing the vapor level from dropping more than 50 percent to preventing the vapor level from dropping more than four inches.
- 8–3–7(a)(1)—Downtime covers need to be closed when the degreaser is not operating.
- 8–3–7(a)(2)—The requirement that the degreaser be equipped with specified switches is not to be conditioned on the solvent being heated to its boiling point.
- 8–3–7(a)(6)(C)—Other systems of demonstrated equivalent or better control need to be submitted to USEPA as a SIP revision.

10b. *326 IAC 8–3–5, 8–3–6, and 8–3–7—Preliminarily Adopted* language has been added to make Indiana's degreasing regulations consistent with USEPA's RACT requirements. The deficiencies cited in 10a have been corrected in these preliminarily adopted revisions. These revisions include both improved control requirements and the requirement that the authorization to use any equivalent controls be submitted to USEPA as a SIP revision. These revisions are consistent with USEPA RACT guidance and are, therefore, approvable. The combined revisions in 10a and 10b correct deficiency number 5 in Exhibit E.

11a. *326 IAC 8–4–8 Leaks from petroleum refineries; monitoring; reports*—Exemptions from the monitoring requirements in 8–4–8 have been deleted for inaccessible valves and after July 1, 1991, deleted for components in lines carrying gases composed of ninety percent methane and/or ethane. Commencing July 1, 1991, components which are located where monitoring would be hazardous shall be monitored when conditions allow these components to be monitored safely. USEPA Reference Method 21 has replaced the method in the petroleum refinery CTG for monitoring leaks. Elimination of these monitoring exemptions is consistent with USEPA policy and corrects deficiences numbers 7 and 15 in Exhibit E. Method 21 is USEPA's most current test method for monitoring leaks and is, therefore, approvable.

11b. *326 IAC 8–4–8 Leaks from petroleum refineries; monitoring; reports*

1. *Preliminarily Adopted* language has been added to 8–4–8(p) which specifies that recordkeeping and reporting programs varying from the guidelines in subsections (b) through (o) shall be submitted to USEPA as a SIP revision.

2. *Preliminarily Adopted* revisions have been made to 8–4–8(q) which make the following corrections:

(a) "number of severity" in 8–4–8(q)(1) has been changed to "number and severity".

[8] On April 26, 1990, the Indiana Air Pollution Control Board preliminarily adopted 326 IAC 8–2–1(a)(2) to correct an error in prior rulemaking. The applicability section, 326 IAC 8–2–1, was inadvertently modified to remove a federally approved requirement that all major surface coating operations constructing in attainment area between 1980 and 1990 would be required to meet RACT.

(b) "the owner or operator" in 8–4–8(q)(2) has been changed to "no owner or operator".

These preliminarily adopted revisions are required and approvable because they specify that any plan changes must be submitted to USEPA as SIP revisions, and they correct what appear to be typographical errors (in 8–4–8(q)).

12. *326 IAC 8–5–3 Synthesized pharmaceutical manufacturing operations*—The control requirement for air dryers and production equipment exhaust systems at synthesized pharmaceutical manufacturing facilities, with emissions of 150 kilograms per day or greater, has been increased from 85 percent reduction to 90 percent reduction (effective July 1, 1991). This revision makes the air dryer and production equipment exhaust system control requirement consistent with USEPA guidance and is, therefore, approvable. This revision corrects deficiency number 8 in Exhibit E.

13. *326 IAC 8–5–4 Pneumatic rubber tire manufacturing—Preliminarily Adopted* revisions to 8–5–4 establish specific overall control efficiency requirements for rubber tire manufacturing instead of capture efficiencies, that are only goals, and control device efficiencies (which are in Indiana's existing SIP).

These revised rules apply to facilities with 100 tons potential emissions or greater. Compliance with the control requirements is required by December 31, 1991. This section has been revised to include specific and enforceable overall control requirements. Any alternative emission reduction systems must be submitted to USEPA as a SIP revision. These revisions are consistent with USEPA policy and are therefore, approvable.

However, this section is not approvable because there is no basis for an applicability cutoff of 100 tons per year of potential VOC emissions. In an October 24, 1990, letter IDEM certified that there are no rubber tire manufacturing facilities in any Indiana nonattainment area and also withdrew this preliminarily adopted rule. USEPA is, therefore, taking no rulemaking action on this provision.

14a. *326 IAC 8–5–5 Graphic arts operations*

This section has been amended as follows:

- 8–5–5(b)(4)—This alternative compliance method specifies an emission limitation of 0.5 pounds of VOC per pound of ink.
- 8–5–5(e)—This subsection specifies overall control requirements consistent with those specified in the CTG: 75 percent for publication rotogravure, 65 percent for packaging rotogravure, and 60 percent for flexographic printing.
- 8–5–5(d)—This subsection allows compliance with 8–5–5(e) to be achieved by July 1, 1991.

Subsections 8–5–5(b)(4) and 8–5–5(e) are consistent with USEPA policy and are, therefore, approvable. Subsection 8–5–5(d) allows until July 1, 1991, for subject sources to achieve compliance. This would ordinarily be approvable because 1 year to comply with new control requirements is expeditious. However, 8–5–5(f) allows an automatic one year extension (beyond July 1, 1991). Therefore, 8–5–5(d) and (f), together, allow 2 years for subject sources to achieve compliance.

USEPA policy (as stated in the March 16, 1989, policy memorandum titled "Compliance Schedules for Volatile Organic Compounds", a copy of which is in the docket), provides that to achieve expeditious compliance sources need to achieve compliance with corrected VOC emission limits within one year or less. Therefore, 8–5–5(d) is not approvable.

14b. *326 IAC 8–5–5 Graphic arts operations*—A *Preliminarily Adopted* revision to 8–5–5 consists of deletion of 8–5–5(f) (which allows an automatic one-year compliance date extension). "Maximum reasonable capture" language has also been deleted. The combined revisions to 8–5–5 (both promulgated and preliminarily adopted) correct the graphic arts control requirements and correct deficiency number 9 in Exhibit E.

Deletion of 8–5–5(f) results in an expeditious compliance schedule for complying with the new add-on control requirements. This preliminarily adopted revision is, therefore, approvable.

15. *Equivalent/Alternative Methods*—Indiana's rules contain several sections that allow equivalent test methods and alternative control techniques provided that they are submitted to USEPA as SIP revisions. Indiana's language is approvable because it acknowledges that these equivalent/alternate methods are not part of the federally approved SIP unless and until they are specifically approved by USEPA by SIP revisions. USEPA proposes to add language to its approval in Part 52 of the CFR clarifying that (consistent with USEPA's discussions with IDEM) USEPA must approve any such proposed revisions before they are effective in altering the federally enforceable SIP.

Conclusion

USEPA is proposing to approve Indiana's revised RACT regulations, as discussed previously and listed (including the date of submittal of the version being proposed) in the following Table. A description of the corrections made in the withdrawn sections is also provided because these corrections have been incorporated in the further revised sections submitted on March 9, 1990, and March 21, 1990. The following summary table includes the Exhibit E deficiencies and the resolution of these deficiencies.[9] The resolution section of the summary table specifies the Indiana submittal correcting the deficiency and whether the submittal has been promulgated (PROM) or preliminarily adopted (PA) by Indiana (or both). The distinction between promulgated and preliminarily adopted is only being made for the October 23, 1990, submittal. The preliminarily adopted rules have been submitted for parallel processing.[10] USEPA will complete rulemaking on these preliminarily adopted rules only after they are promulgated by the State, and without further proposal only if the rules are not changed significantly during their promulgation by the State. If the rules are significantly revised in promulgation, USEPA will publish a revised proposed rulemaking action.

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[9] When USEPA originally approved certain of Indiana's RACT rules, it did so in Indiana's prior codification, Title 325. Subsequently, Indiana recodified its rules in Title 326; thus the change from Title 325 to 326 in some of the rules listed below.

[10] At the request of the State of Indiana, USEPA is proposing approval of the preliminarily adopted Indiana rules utilizing USEPA's parallel processing procedures which allow USEPA to initiate the rulemaking process prior to final adoption of rules by the State.

OUTSTANDING INDIANA VOC DEFICIENCIES

Deficiency	Resolution (Submittal)
1. 325 IAC 8-1-1-2 (a) and (b) allow seasonal control using carbon adsorption and incineration. 325 IAC 8-1-1-2(g) allows seasonal control for a control method that consumes energy. USEPA policy provides for seasonal control for natural gas fired afterburners and use of emulsified asphalt.	Rule 326 IAC 8-1-2 has been revised to only allow seasonal control for natural gas fired incinerators (3-9-90).
2. 325 IAC 8-2-1(a) exempts existing surface coating lines in ozone nonattainment areas with potential emissions less than 100 tons/year. The recommended size cutoff is actual emissions before control of 3 pounds (lbs)/hour or 15 lbs/day or potential emisions of 10 tons/year.	The exemption level in 326 IAC 8-2-1(a) has been revised to 15 lbs/day (10/23/90, PROM) and before add-on control (10/23/90, PA).
3. 325 IAC 8-2-5(a) exempts from paper coating limits single pieces of equipment which conduct rotogravure or flexographic printing operations in line with surface coating operations.	326 IAC 8-2-5 has been revised to specify that such an exemption is allowed only for sources meeting the emission limitations in Indiana's Graphic Arts Rule (3/9/90).
4. 325 IAC 8-2-10(a)(2)(F)-(I) exempt maintenance coatings, adhesives or materials used for preparation of adhesives, lubricants, and chromium plated plastics. These exemptions are not contained in the CTG.	These exemptions have been deleted from 326 IAC 8-2-9 (10/23/90, PROM).
5. 325 IAC 8-3-1 contains requirements for operating practices only, not control equipment for solvent metal cleaning operations.	The control requirements have been added in 326 IAC 8-3-5, 8-3-6, and 8-3-7 (10/23/90, PROM) and remaining inconsistencies have been corrected (10/23/90, PA).
6. 325 IAC 8-3-1(a) exempts existing solvent metal cleaning facilities in nonattainment areas with potential emissions less than 100 tons/year. The CTG has recommended size cutoffs in terms of square feet of air/vapor interface.	The applicability criteria in 326 IAC 8-3-1 has been made consistent with USEPA policy (10/23/90, PROM).
7. 325 IAC 8-4-8(b)(2)(C) exempts components at petroleum refineries which carry gases composed of at least 90 percent methane and/or ethane from monitoring requirements. The CTG does not contain such a provision.	This exemption has been deleted from 326 IAC 8-4-8 (10/23/90, PROM).
8. 325 IAC 8-5-3(b)(2)(A) requires 85 percent reduction from exhaust systems at synthesized pharmaceutical facilities if emissions are greater than 150 kg/day. The CTG recommends 90 percent reduction.	The control requirement in 326 IAC 8-5-3 has been increased to 90 percent (10/23/90, PROM).
9. 325 IAC 8-5-5(c) requires "maximum reasonable capture" with goals of 75 and 65 percent for publication and packaging rotogravure printing. The CTG recommends overall control efficiencies of 75 and 65 percent for publication and packaging rotogravure printing.	326 IAC 8-5-5 has been revised to include overall control requirements specified in the CTG (10/23/90, PROM). Deletion of 8-5-5(f) results in an expeditions compliance schedule (10/23/90, PA).
10. Indiana's rules do not specify that equivalency calculations must be performed in units of lbs VOC/gallon solids for bubbles, crossline averages, or compliance using add-on control.	326 IAC 8-1-2 has been revised to add a requirement that equivalency calculations be performed in units of lbs VOC/gallon of solids (10/23/90, PROM).
11. Indiana's VOC definition allows VOC content to be measured by an "approved equivalent method".	The provision allowing use of an "approved equivalent method" has been deleted from 326 IAC 1-2-90 (10/23/90, PROM).
12. 325 IAC 1.1-1 Section 15 may exempt from control coating lines without bake ovens.	326 IAC 1-2-14 has been revised to define "coating line" consistent with USEPA guidance (10/23/90, PA).
13. Not all rules concerning test methods specify that results may be verified. There is no surface coating add-on control test method. Provisions for equivalent methods have been added.	326 IAC 8-1-4 has been revised to specify that test results may be verified. Test methods for add-on control have been added to 8-1-4. Any equivalent methods must be submitted to USEPA as a SIP revision (10/23/90, PROM).
14. Indiana's rules do not specify a procedure to be used to determine capture efficiency. In addition, the rubber tire manufacturing rules require maximum reasonable capture instead of specific control requirements.	The capture efficiency test method was not issued by USEPA until April 1990. In addition, there are no rubber tire manufacturing sources in any nonattainment area. Therefore, these corrections need not be made at this time.
15. 325 IAC 8-4-8(b)(2)(c) exempts inaccessible valves and components located where monitoring would be hazardous from monitoring requirements at petroleum refineries.	326 IAC 8-4-8 has been revised to eliminate the exemption for inaccessible valves and to require that components which would normally be hazardous to monitor must be monitored whenever conditions allow it to be done safely (10/23/90, PROM).

Interested parties are invited to submit comments on these proposed SIP revisions and on USEPA's proposed rulemaking actions. Public comments received by the date indicated above will be considered in the development of the final rule.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and record keeping requirements.

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

Dated: November 16, 1990.

David A. Kee,

Acting Regional Administrator.

[FR Doc. 90-30596 Filed 12-31-90; 8:45 am]

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Notices

Federal Register
Vol. 56, No. 1
Wednesday, January 2, 1991

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

Forest Service

Noisy Divide Timer Sale and Other Integrated Resource Projects, Colville National Forest, Pend Oreille County, Washington

AGENCY: Forest Service, USDA.

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

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) to implement a timber sale and other integrated resources projects within the Noisy Divide Analysis Area. The EIS will tier to the 1988 Land and Resource Management Plan (Forest Plan) for the Colville National Forest, which provides the overall management direction for the area. The Forest Service proposed action will be in compliance with this direction. The analysis area is located on the Sullivan Lake Ranger District and includes portions of the Harvey Creek, Middle Fork Harvey Creek, North Fork Harvey Creek and Noisy Creek drainages. The analysis area contains a portion of the Grassy Top Roadless Area which was inventoried in the second Roadless Area Review and Evaluation. The Forest Service proposal includes: harvest of timber; development of associated road systems; and other integrated resource projects (trail construction, camp site development, wildlife habitat improvements, etc.). Implementation of the proposed action would begin in October, 1992. The Colville National Forest invites written comments and suggestions on the scope of the analysis.

DATES: Comments concerning the scope of the analysis should be received in writing by February 15, 1991.

ADDRESSES: Send written comments to Andrew C. Mason, District Ranger, Sullivan Lake Ranger District, Metaline Falls, WA 99153.

FOR FURTHER INFORMATION CONTACT: Timothy M. Bertram, Project Leader, at the above address, telephone (509) 446–2681.

SUPPLEMENTARY INFORMATION: The Noisy Divide EIS will be tiered to the final EIS for the Colville National Forest Land and Resource Management Plan (Forest Plan). The Forest Plan's Management Area direction for this analysis area is approximately 30 percent MA 2 Caribou Habitat; 5 percent MA 3 Recreation; 13 percent MA 5 Scenic/Timber; 1 percent MA 6 Scenic/Winter Range; 32 percent MA 7 Wood/Forage; 1 percent MA 8 Winter Range; 18 percent MA 11 Semi-Primitive, Non-Motorized Recreation. The analysis area includes a portion of the Grassy Top Roadless Area which was considered but not selected for wilderness designation in the 1984 Washington State Wilderness Act. Appendix A, Recreation and Wilderness Projects, of the Forest Plan lists Noisy Creek Campground Overflow and Sullivan Lakeshore Shaping as two possible developed site reconstruction and construction projects. Appendix A also lists Hall Mtn. Grassy and Grassy Top as two possible trail construction/reconstruction projects. Appendix B, Wildlife and Fisheries Projects, of the Forest Plan identifies the annual habitat improvement program for the forest including Grizzly Bear and Caribou Habitat Protection and Management. Appendix D. Timber Sale Activity Schedule of the Forest Plan lists Noisy Divide as a proposed timber sale. Appendix E, Watershed Restoration Projects, of the Forest Plan list Noisy Erosion Control as a possible project.

The analysis area for the project is located southeast of Sullivan Lake and includes approximately 10,000 acres. The tentative action alternatives include timber harvest, with volumes ranging from 2 to 5 million board feet, and new road construction, ranging from 1 to 4 miles.

Public participation will be especially important at several points during the analysis, beginning with the scoping process (40 CFR 1501.7. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies, and other individuals or organizations who may be interested in or affected by the proposed activities. This input will be used in preparation of the draft EIS.

The Forest Service began recent scoping efforts in 1989 for the Noisy Divide Analysis Area, prior to the decision to prepare and EIS. Letters were mailed to 26 individuals and organizations. Newspaper articles were also published requesting comment on proposed projects within the analysis area.

Preliminary issues identified are: Timber harvest; retention of old growth; habitat for grizzly bear and caribou; entry into roadless areas; water quality; and riparian protection.

A range of project alternatives will be considered, including a no-action alternative. Based on the issues gathered through scoping, the action alternatives will vary in: (1) The amount and location of acres considered for treatment, (2) the amount of road constructed for access, (3) the silvicultural and post-harvest treatments prescribed, and (4) the number, type, and location of other integrated resource projects.

Public response to the mailing will assist the Forest Service in identifying those who wish to be kept informed and involved with the planning process. Continued scoping and public participation efforts will be used by the interdisciplinary team to identify new issues, determine alternatives in response to the issues, and determine the level of analysis needed to disclose potential biological, physical, economic, and social impact associated with this project. The Forest Service is seeking information, comments, and assistance from other agencies, organizations or individuals who may be interested in or affected by the proposed project. This input will be used in preparation of the draft EIS.

The Forest Service is the lead agency. The draft EIS is expected to be filled with Environmental protection Agency (EPA) and to be available for public review by April 1991. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. EPA will publish a notice of availability of the draft EIS in the **Federal Register.**

The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register.** It is very important that those interested in

the management of the Colville National Forest participate at that time.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alters an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final EIS is scheduled for completion by January, 1992. In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period for the draft EIS. Edward L. Schultz, Forest Supervisor, is the Responsible Official. As the Responsible Official he will decide which, if any, of the proposed activities will be implemented. His decision and reasons for the decision will be documented in the Record of Decision, which will be subject to Forest Service Appeal Regulations (36 CFR 217).

Dated: December 19, 1990

Patrick J. Gallagher,

Acting Forest Supervisor.

[FR Doc. 90-30578 Filed 12-31-90; 8:45 am]

BILLING CODE 3410-11-M

Timothy Timber Sale and Other Related Actions, Umatilla National Forest, Union and Wallowa Counties, OR

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: Notice is hearby given that the Forest Service, USDA will prepare an environmental analysis and environmental impact statement (EIS) for a proposal to develop the Forest Land and Resource Management Plan's desired future condition through the Timothy Timber Sale and other related actions. The EIS will tier to the final EIS and Land and Resource Management Plan (Forest Plan) for the Umatilla National Forest and the final EIS, ROD, and Mediated Agreement for Managing Competing and Unwanted Vegetation.

The proposed project is located in the upper Little Lookingglass drainage of the Walla Walla Ranger District, Umatilla National Forest. The proposed project to develop the desired future condition may harvest timber by conventional systems and/or by helicopter, construct and/or reconstruct roads, manage vegetation, treat fuels and/or regenerate timber stands to provide high levels of effectiveness for big game and other wildlife species, maintain or enhance water quality, produce a high level of potential habitat capability for all species of fish and wildlife within the designated riparian habitat areas and manage the area seen from a travel route as a natural appearing to slightly altered landscape. This project is proposed for implementation in Fiscal Year 1992. The Umatilla National Forest invites written comments and suggestions on the scope of the analysis in addition to comments already received as a result of previous scoping activities. The agency will give notice of the full environmental analysis and decision making process that will occur on the proposal to provide interested and affected people information on how they may participate and contribute to the final decision.

DATES: Comments concerning the issues and the scope of the analysis should be received in writing by February 8, 1991.

ADDRESSES: Send written comments and suggestions concerning managment of this area to Ralph H. Perkins, District Ranger, Walla Walla Ranger District, 1415 West Rose Street, Walla Walla, Washington 99362 (telephone (509) 522-6290).

FOR FURTHER INFORMATION CONTACT: Kathy Roche, project coordinator, 1415 West Rose Street, Walla Walla, Washington 99362, (509) 522-6289.

SUPPLEMENTARY INFORMATION: The Umatilla National Forest Land and Resource Management Plan direction for the area includes the following management areas:

A4 Viewshed 2: Manage the area seen from a travel route as a natural appearing to slightly altered landscape.

C4 Wildlife Habitat: Manage Forest Lands to provide high levels of potential habitat effectiveness for the big game and other wildlife species with emphasis on size and distribution of habitat component (forage and cover areas for elk and snags and dead and down materials for all cavity users). Unique wildlife habitats and key use areas will be retained or protected.

C5 Riparian (Fish and Wildlife): Maintain or enhance water quality and produce a high level of potential habitat capability for all species of fish and wildlife within the designated riparian habitat areas while providing for a high level of habitat effectiveness for big game.

The proposed project area is within the Jaussaud Corral Roadless Area (#14023) which was considered but not selected for Wilderness designation. The project area is adjacent to but separated from the the Wenaha-Tucannon Wilderness Area by a primitive road.

Preliminary issues identified include economics, biological diversity, elk habitat, access and roadless character. The development of the desired future condition may harvest timber by conventional systems or by helicopter, construct and/or reconstruct roads, manage vegetation, treat fuels and/or regenerate timber stands over a project area of about 2150 acres. The analysis will evaluate a range of alternatives. Alternatives to be evaluated include no action or no harvesting and no road building at this time and action alternatives that may propose timber harvest of up to 8 million board feet of timber and possible construction of 6.5 miles of road and/or reconstruction of 2.9 miles of road and involve the use of conventional or helicopter timber harvesting systems. There are no permits or licenses needed to implement this action.

Public participation will be especially important at several points during the analysis, beginning with the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies, and other individuals or organizations who may be interested in or affected by the proposal.

This input will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying major issues to be analyzed in depth.
3. Identifying issues which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives based on themes which will be derived from issues recognized during scoping activities.
5. Identifying potential environmental effects of this project and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.
7. Notifying interested publics of opportunities to participate through meetings, personal contacts, or written comments. Keeping the public informed through the media and/or written material (i.e. newsletters, correspondence, etc).

Initial scoping began in 1983 and included public scoping meetings held in October and December 1989 and December 1990. Additional comments are appreciated throughout the analysis process.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by August 1991. At the time, EPA will publish a notice of availability (NOA) of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the NOA in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 f. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed project, comments on the draft EIS should be as specified as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The Forest Service, USDA is the lead agency. The Forest Supervisor, Umatilla National Forest (2517 S.W. Hailey Ave., Pendleton, OR 97801) is the responsible official.

The final EIS is scheduled to be completed by April 1992. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. Jeff D. Blackwood, Forest Supervisor, Umatilla National Forest, 2517 S.W. Hailey Avenue, Pendleton, Oregon 97801, is the Responsible Official. As the Responsible Official he will decide which, if any, of the proposed activities will be implemented. The Responsible Official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR 217).

Dated: December 19, 1990.

Jeff D. Blackwood,

Forest Supervisor.

[FR Doc. 90-30575 Filed 12-31-90; 8:45 am]

BILLING CODE 3410-11-M

Buzzard Timber Sale, Umatilla National Forest, Union and Wallowa Counties, OR

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service, USDA will prepare an environmental impact statement (EIS) for a proposal to demonstrate that roadless character as well as other resource values can be protected, sustained, and/or enhanced while harvesting timber. The demonstration will be accomplished by sensitive timber harvest through the Buzzard Timber Sale in an area designated by the Umatilla National Forest Land and Resource Management Plan (Forest Plan) as a "sunset strategy". The "sunset strategy" is a time limited strategy that allows scheduled harvest over an area of resource controversy until the year 2000; at that time the area will be withdrawn from scheduled harvest. If management of the area successfully demonstrates that timber harvest can take place while meeting other resource concerns, the area can revert to scheduled harvest through appropriate NEPA review process and approval. The Buzzard Timber Sale EIS will tier to the final EIS and Forest Plan for the Umatilla National Forest and the final EIS and Mediated Agreement for Managing Competing and Unwanted Vegetation.

The proposal is located in the upper Little Lookingglass, Buzzard, and Mottet drainages of the Walla Walla Ranger District, Umatilla National Forest. Specific project proposals may include: construction and reconstruction of roads; harvest of timber with various harvest systems including helicopter logging; site preparation and vegetation management; reforestation and other related actions to provide high levels of effectiveness for big game and other wildlife species, maintain or enhance water quality and produce a high level of potential habitat capability for all species of fish and wildlife within the designated riparian habitat areas, and manage the area seen from portions of Forest Service roads 64, 6403, 6411, 6413, and 6415 as a natural appearing to slightly altered landscape. This project is proposed for implementation in Fiscal Year 1992. The Umatilla National Forest invites written comments and suggestions on the scope of the analysis in addition to comments already received as a result of previous scoping activities. The agency will give notice of the full environmental analysis and decision-making process that will occur on the proposal to interested and affected people and information on how they may participate and contribute to the final decision.

DATES: Comments concerning the issues and the scope of the analysis should be received in writing by February 8, 1991.

ADDRESSES: Send written comments and suggestions concerning management of this area to Ralph H. Perkins, District Ranger, Walla Walla Ranger District, 1415 Rose Street, Walla Walla, Washington 99362, (509) 522-6290.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Ken Tu, Project Coordinator, 1415 West Rose Street, Walla Walla, Washington 99362, (509) 522–6290.

SUPPLEMENTARY INFORMATION: The proposal may include road construction and reconstruction, harvesting timber, site preparation and vegetation management and reforestation over a project area of about 4,600 acres. The analysis will evaluate a range of alternatives from no action (no harvesting or road building) at this time to the harvesting of up to 10 million board feet of timber, the construction of 7 to 9 miles of road, and reconstruction of about 1 mile of road.

The Forest Plan direction for the area includes Management Areas: A3 Viewshed 1—Manage the area seen from portions of Forest Service Roads 64, 6403, 6411, and 6413 as a natural appearing landscape; A4 Viewshed 2—Manage the area seen from portions of Forest Service road 6415 as a natural appearing to slightly altered landscape; A6 Developed Recreation—Provide recreation opportunities that are dependent on structural facilities for user conveniences at or around Jubilee Lake and Mottet campgrounds; C1 Dedicated Old Growth—Provide and protect suitable habitat for wildlife species dependent upon mature and/or overmature forest stands; C4 Wildlife Habitat—Provide high levels of potential habitat effectiveness for big game and other wildlife species with emphasis on size and distribution of elk habitat components, and protect or retain unique wildlife habitats and key use areas; and C5 Riparian (fish and wildlife)—Maintain or enhance water quality and produce a high level of potential habitat capability for all species of fish and wildlife within the designated riparian habitat areas while providing a high level of habitat effectiveness for big game. The proposal is within the Jaussaud Corral Roadless Area (No. 14023) which was considered but not selected for Wilderness designation. The analysis area is adjacent to but separated by Forest Service roads 64 and 6415 from the Wenaha-Tucannon Wilderness Area.

Preliminary issues identified include: Economics; biological diversity; elk habitat; access; and roadless character. There are no permits or licenses needed to implement this action.

Public participation will be especially important at several points during the analysis, beginning with the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies, and other individuals or organizations who may be interested in or affected by the proposal. This input will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying major issues to be analyzed in depth.
3. Identifying issues which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives based on themes which will be derived from issues recognized during scoping activities.
5. Identifying potential environmental effects of this project and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.
7. Notifying interested publics of opportunities to participate through meetings, personal contacts, or written comments. Keeping the public informed through the media and/or written material (i.e. newsletters, correspondence, etc.).

Initial public scoping began in October 1989 with a public meeting. Public scoping meetings were also held in December 1989 and December 1990. Additional comments will be solicited and are appreciated throughout the analysis process.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by August 1991. At this time, EPA will publish a notice of availability (NOA) of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the NOA in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 f. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

The final EIS is scheduled to be completed by April 1992. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. Jeff D. Blackwood, Forest Supervisor, Umatilla National Forest, 2517 S.W. Hailey Avenue, Pendleton, Oregon 97801, is the Responsible Official. As the Responsible Official he will decide which, if any, of the proposed activities will be implemented. The Responsible Official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR 217).

Dated: December 19, 1990.

[FR Doc. 90–30576 Filed 12–31–90; 8:45 am]
BILLING CODE 3410–11–M

Five Points Timber Sales and Related Projects, Wallowa-Whitman National Forest, Union and Umatilla Counties, Oregon

AGENCY: Forest Service, USDA.

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

SUMMARY: The Forest Service, USDA will prepare an environmental impact statement (EIS) for three timber sales and other related projects. The EIS will tier to the Wallowa-Whitman National Forest Land and Resource Management Plan and its Environmental Impact

Statement (April 23, 1990) which provides the overall guidance for management of the area for the next ten years.

The proposed projects are located approximately eight miles north of LaGrande, Oregon in the Five Points drainage on the La Grande Ranger District, Wallowa-Whitman National Forest. The specific projects include: (1) Harvest of timber from three timber sales; (2) development of associated road systems; (3) development of recreational opportunities, and (4) enhancement programs for fisheries, wildlife, soil, and water resources. The projects will be implemented from 1992 and 1995.

The Wallowa-Whitman National Forest invites written comments and suggestions on the scope of the analysis. In addition, the agency will give notice of the full environmental analysis and decision making process that will occur on the proposals so that interest and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis should be received by February 15, 1991.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Abigail Kimbell, District Ranger, La Grande Ranger District, 3502 Hwy 30, La Grande, Oregon 97850.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this EIS should be directed to Lyle Kuchenbecker Project Coordinator, (503) 963-7186.

SUPPLEMENTARY INFORMATION: The proposed timber sales are listed in Appendix C of the Forest Plan. Updated information includes:

TIMBER SALES AND ASSOCIATED ROADS

Fiscal year	Sale name	Legal description	Acres	Net MMBF	Road miles	
					C	R
1992	Drumhill	T/1S, R37E WM, Sec. 15, 21, 22, 27, 28, 34	500	3.0	7.0	2.0
1992	Evans	T1S, R37E WM, Sec. 35, 36; T2S, R37E WM, Sec. 1, 2, 12	200	2.0	6.0	0.8
1993	Herron	T1S, R37E WM, Sec. 11-14, 23, 24	500	3.4	8.5	4.0

Abbreviations used above: T: Township; R: Range; S: South; E: East; WM: Willamette Meridian; MMBF: Million board feet; C: Construction; R: Reconstruction; Sec: Section.

* Road construction needs will vary with logging systems. If ground and skyline systems are used extensively, construction will approximate the indicated mileage. If helicopter logging is used in conjunction with other systems, road development needs could be considerably less.

Other Related Projects

Recreation Enhancement:
resource-interpretive signing,
trial construction,
campground construction;
Wildlife habitat enhancement;
Fisheries habitat improvement.

The Five Points area contains about 13,700 acres. The Wallowa-Whitman National Forest Land and Resource Management Plan allocates the area into the following Management Areas (MA):

—Eighty-two percent is in Wildlife/Timber (summer range MA 3A);

—Three percent is in Wildlife/Timber (winter range MA 3);

—Twelve percent is in Timber Production Emphasis (MA 1);

—Three percent is in Old Growth Preservation (MA 15).–

A public scoping process will be used to assist in the analysis and data gathering for this proposal. Notices published in local newspapers and radio announcements as well as mailings will be used to solicit comments from the public. Public meetings will be held in February and March, 1991. Those interested in the project will receive periodic updates during the analysis process. Scoping will assist in:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.
4. Exploring additional alternatives based on themes which will be derived from issues recognized during the scoping activities.
5. Identification of potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative impacts and connected actions).

Licenses and permits required to implement the proposed action are already held by the Forest Service who is the lead agency for this project.

Tentative issues that have been identified include:

1. Impacts on big game habitat (winter and summer range);
2. Impacts on water quality and fisheries;
3. Impacts on the visual quality;
4. Recreation development opportunities;
5. Cost effectiveness of the proposed timber sales;
6. Maintenance of long term site productivity;
7. General public concern, much of the area is currently unroaded.

Implementation of the proposed action could result in substantial new road development.

Some of the decisions to be made with this proposal are: determine level of timber harvest and location of harvest units, identify harvest methods, specify logging systems and corresponding roading intensity, identify watershed and fisheries improvement opportunities, and identify recreation development opportunities.

R.M. Richmond, Forest Supervisor, Wallowa-Whitman National Forest, is the responsible official for this proposal.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by June 1991. At that time EPA will publish a notice of availability of the draft EIS in the **Federal Register.**

The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register.**

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after the completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it

is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages of chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed by October 1991. In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1502.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations (36 CFR 217).

Dated: December 19, 1990.

R.M. Richmond,

Forest Supervisor.

[FR Doc. 90-30577 Filed 12-31-90; 8:45 am]

BILLING CODE 3410-11-M

Federal Grain Inspection Service

Designation Renewal of the States of California (CA) and Washington (WA), and the Kankakee (IL) Agency

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of the California Department of Food and Agriculture (California), Washington Department of Agriculture (Washington), and Kankakee Grain Inspection, Inc. (Kankakee), as official agencies responsible for providing official services under the U.S. Grain Standards Act, as amended (Act).

EFFECTIVE DATE: February 1, 1991.

ADDRESSES: Neil E. Porter, Deputy Director, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454.

FOR FURTHER INFORMATION CONTACT: Neil E. Porter, telephone 202-447-8262.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that California's, Washington's, and Kankakee's designations terminate on January 31, 1991, and requested applications for official agency designation to provide official services within specified geographic areas in the August 1, 1990, **Federal Register** (55 FR 31203). Applications were to be postmarked by August 31, 1990. California, Washington, and Kankakee were the only applicants, and each applied for the entire area currently assigned to that agency.

The Service announced the applicant names in the October 1, 1990, **Federal Register** (55 FR 39995) and requested comments on the applicants for designation. Comments were to be postmarked by November 15, 1990. No comments were received.

The Service evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act; and in accordance with Section 7(f)(1)(B), determined that California, Washington, and Kankakee are able to provide official services in the geographic areas for which the Service is renewing their designation.

Effective February 1, 1991, and terminating January 31, 1994, California and Washington are designated to provide official inspection and Class X or Y weighing functions and Kankakee is designated to provide official inspection services in their specified geographic areas, as previously described in the August 1 **Federal Register**.

Interested persons may obtain official services by contacting California at 916-445-1202; Washington at 206-753-5066; and Kankakee at 815-932-2851.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: December 10, 1990.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 90-30305 Filed 12-31-90; 8:45 am]

BILLING CODE 3410-EN-F

Request for Comments on the Designation Applicants in the Geographic Areas Currently Assigned to the Lincoln (NE) and Omaha (NE) Agencies

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic areas currently assigned to Lincoln Inspection Service, Inc. (Lincoln) and Omaha Grain Inspection Service, Inc. (Omaha).

DATES: Comments must be postmarked on or before February 19, 1991.

ADDRESSES: Comments must be submitted in writing to Paul Marsden, RM, FGIS, USDA, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090-6454. SprintMail users may respond to [PMARSDEN/FGIS/USDA]. Telecopier users may send responses to the automatic telecopier machine at 202-447-4628, attention: Paul Marsden. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, S.W., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Paul Marsden, telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified geographic areas in the November 1, 1990, **Federal Register** (55 FR 46088). Applications were to be postmarked by December 3, 1990. Lincoln and Omaha were the only applicants for designation in those areas, and each applied for the entire area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the applicants for designation. Commenters are encouraged to submit reasons for support or objection to this designation

action and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicant will be informed of the decision in writing.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: December 10, 1990.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 90–30306 Filed 12–31–90; 8:45 am]

BILLING CODE 3410–EN–F

Request for Designation Applicants to Provide Official Services in the Geographic Area Currently Assigned to the Sioux City (IA) and Tischer (IA) Agencies

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic areas currently assigned to the specified agencies. The official agencies are the Sioux City Inspection and Weighing Agency, Inc. (Sioux City) and A. V. Tischer and Son, Inc. (Tischer).

DATES: Applications must be postmarked on or before February 1, 1991.

ADDRESSES: Applications must be submitted to Neil E. Porter, Deputy Director, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Neil E. Porter, telephone (202) 447–8262.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Sioux City, located at 840 Clark Street, Sioux City, IA 51101, and Tischer, located at 137 10th Street, N.W., Fort Dodge, IA, 50501, were designated under the Act on July 1, 1988, as official agencies to provide official inspection services.

The designations of these official agencies terminate on June 30, 1991. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Sioux City, in the States of Iowa, Nebraska, and South Dakota, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

In Iowa:

Bounded on the North by the northern Iowa State line from the Big Sioux River east to U.S. Route 59;

Bounded on the East by U.S. Route 59 south to B24; B24 east to the eastern O'Brien County line; the O'Brien County line south; the northern Buena Vista County line east to U.S. Route 71; U.S. Route 71 south to the southern Sac County line;

Bounded on the South by the Sac and Ida County lines; the eastern Monona County line south to State Route 37; State Route 37 west to State Route 175; State Route 175 west to the Missouri River; and

Bounded on the West by the Missouri River north to the Big Sioux River; the Big Sioux River north to the northern Iowa State line.

In Nebraska: Cedar, Dakota, Dixon, Pierce (north of U.S. Route 20 and west of U.S. Route 81), and Thurston Counties.

In South Dakota:

Bounded on the North by State Route 44 (U.S. 18) east to State Route 11; State Route 11 south to A54B; A54B east to the Big Sioux River;

Bounded on the East by the Big Sioux River; and

Bounded on the South and West by the Missouri River.

The following locations, outside of the above contiguous geographic area, are part of this geographic area assignment: Farmers Elevator Company, and Feeders Mill & Elevator, Inc., both in Platte, Charles Mix County, South Dakota (located inside Aberdeen Grain Inspection, Inc.'s area); Charter Oak Grain & Seed, and Delanty Grain Company, both in Charter Oak, Crawford County, Iowa (located inside Fremont Grain Inspection Department, Inc.'s area); Gooch Seed Mill, and Ernie's Seed & Field Service, both in Storm Lake, Buena Vista County, Iowa (located inside A. V. Tischer and Son, Inc.'s area).

The geographic area presently assigned to Tischer, in the State of Iowa, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by Iowa–Minnesota State line from U.S. Route 71 east to U.S. Route 169;

Bounded on the East by U.S. Route 169 south to State Route 9; State Route 9 west to U.S. Route 169; U.S. Route 169 south to the northern Humboldt County line; the Humboldt County line east to State Route 17; State Route 17 south to C54; C54 east to U.S. Route 69; U.S. Route 69 south to the northern Hamilton County line; the Hamilton County line west to R38; R38 south to U.S. Route 20; U.S. Route 20 west to the eastern and southern Webster County lines to U.S. Route 169; U.S. Route 169 south to E18; E18 west to the eastern Greene County line; the Greene County line south to U.S. Route 30;

Bounded on the South by U.S. Route 30 west to E53; E53 west to N44; N44 north to U.S. Route 30; U.S. Route 30 west to U.S. Route 71; and

Bounded on the West by U.S. Route 71 north to the Iowa–Minnesota State line.

The following locations, outside of the above contiguous geographic area, are part of this geographic area assignment: Farmers Co-op Elevator, Boxholm, Boone County (located inside Central Iowa Grain Inspection Service, Inc.'s area); and Cargill, Inc., Algona, Kossuth County; Big Six Elevator, Burt, Kossuth County; Gold-Eagle, Goldfield, Wright County; and Farmers Co-op Elevator, Holmes, Wright County (located inside D. R. Schaal Agency's area).

Exceptions to Tischer's assigned geographic area are the following locations inside Tischer's area which have been and will continue to be serviced by the following official agencies:

1. D. R. Schaal Agency: Gold Eagle Co-op, Eagle Grove, Wright County; and

2. Sioux City Inspection and Weighing Agency, Inc.: Gooch Seed Mill, and Ernie's Seed & Field Service, both in Storm Lake, Buena Vista County.

Interested parties, including Sioux City and Tischer, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic area, as specified above, under the provisions of section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning July 1, 1991, and ending June 30, 1994. Parties wishing to apply for designation should contact the Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: December 10, 1990.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 90–30307 Filed 12–31–90; 8:45 am]

BILLING CODE 3410–EN–F

Request for Comments on the Designation Applicants in the McGregor, Iowa, Geographic Area

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the McGregor, Iowa geographic area.

DATES: Comments must be postmarked on or before February 19, 1991.

ADDRESSES: Comments must be submitted in writing to Paul Marsden, RM, FGIS, USDA, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [PMARSDEN/FGIS/USDA]. Telecopier users may send responses to the automatic telecopier machine at 202–447–4628, attention: Paul Marsden. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, S.W., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Paul Marsden, telephone (202) 475–3428.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified geographic area in the November 1, 1990, **Federal Register** (55 FR 46088). Applications were to be postmarked by December 3, 1990. There were seven applicants for designation in the available geographic area. Each applied for the entire geographic area, with several also applying for subdivisions thereof as an alternative. The seven applicants are: 1. Central Iowa Grain Inspection Service, Inc. [entire area, or any geographic subdivision of the area]; 2. Eastern Iowa Grain Inspection and Weighing Service, Inc., [entire area, or that portion east of the western Allamakee and Clayton county lines]; 3. Gary M. Bothwell, Thomas E. Meyer, Beverly J. Bothwell, and Paula Meyer, proposing to do business as Iowa Grain Inspection Service, Inc. [entire area]; 4. Joyce A. White and Ronnie R. White, proposing to do business as McGregor Grain Inspection and Weighing Corporation, Inc., [entire area or any geographic subdivision of the area]; 5. John H. Oliver, Inc., dba Keokuk Grain Inspection Service [entire area, or Clayton County only, or any division which includes Clayton County]; 6. Mid-Iowa Grain Inspection, Inc., [entire area or any geographic subdivision of the area]; 7. David L. Ayers proposing to do business as Northeast Iowa Grain Inspection, Inc. [entire area]. All applicants plan to establish at least one specified service point within the available geographic area to provide official service.

This notice provides interested persons the opportunity to present their comments concerning the applicants for designation. Commenters are encouraged to submit reasons for support or objection regarding applicants and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicant will be informed of the decision in writing.

Persons or firms located in the McGregor, Iowa, geographic area requiring official inspection service should contact the Wisconsin Department of Agriculture, Trade and Consumer Protection at 608–266–7100 to obtain service, on an interim basis, until such time as an applicant is designated to perform official services.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: December 21, 1990.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 90–30308 Filed 12–31–90; 8:45 am]

BILLING CODE 3410–EN–F

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of the following committee meeting:

Name: Federal Grain Inspection Service Advisory Committee.

Date: January 17, 1991.

Place: Wyndham Corpus Christi Hotel, 900 North Shoreline Boulevard, Corpus Christi, Texas 78401.

Time: 8:30 a.m.

Purpose: To provide advice to the Administrator of the Federal Grain Inspection Service with respect to the implementation of the U.S. Grain Standards Act.

The agenda includes (1) status of funds, (2) updates on cost reductions and fees, (3) type approval and equipment calibration, (4) status of research programs, (5) spring wheat protein calibration, (6) implementation of the "Grain Quality Title" of the 1990 Farm Bill, (7) status of standards and regulations, and (8) other matters.

The meeting will be open to the public. Public participation will be limited to written statements unless otherwise requested by the Committee Chairman. Persons, other than members, who wish to address the Committee or submit written statements before or after the meeting should contact John C. Foltz Administrator, FGIS, U.S. Department of Agriculture, P.O. Box 96454, Washington, DC 20090–6454, telephone (202) 382–0219.

Dated: December 21, 1990.

John C. Foltz,

Administrator.

[FR Doc. 90–30309 Filed 12–31–90; 8:45 am]

BILLING CODE 3410–EN–F

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-601]

Final Results of Antidumping Duty Administrative Reviews: Tapered Roller Bearings and Parts Thereof From the People's Republic of China

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce has issued the final results of its 1987–88 and 1988–89 administrative reviews of the antidumping duty order on tapered roller bearings and parts thereof (TRBs) from the People's Republic of China (PRC). The reviews cover Premier Bearing and Equipment, Ltd., a Hong Kong trading company and exporter of this merchandise to the United States. Using best information available, we determined the dumping margin to be 0.97 percent for both reviews.

EFFECTIVE DATE: January 2, 1991.

FOR FURTHER INFORMATION CONTACT: John Beck or Kate Johnson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–3464 or 377–8830, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 15, 1990, the Department published in the **Federal Register** (55 FR 41735) the preliminary results of the 1987–88 and 1988–89 administrative reviews of the antidumping duty order on TRBs from the PRC. On October 25, 1990, petitioner requested that a public hearing be held for both reviews. Petitioner (the Timken Company) and respondent filed case briefs on November 14, 1990, and rebuttal briefs on November 21, 1990. A public hearing was held on November 28, 1990. The Department has now completed these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by these reviews are shipments of TRBs from the PRC. For a portion of the review periods such merchandise was classifiable under items 680.30, 680.39, 681.10, and 692.32 of the Tariff Schedules of the United States (TSUS). Beginning January 1, 1989, the merchandise is classifiable under Harmonized Tariff Schedule (HTS) item numbers 8482.20.00, 8482.91.00.60, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30 and 8483.90.80. The HTS and TSUS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The reviews cover Premier Bearing and Equipment, Ltd. (Premier), an exporter to the United States of TRBs manufactured in the PRC. The first review covers the period February 6, 1987, through May 31, 1988. The second review covers the period June 1, 1988, through May 31, 1989.

Best Information Available

On October 15, 1990, the Department announced in the preliminary results of the 1987–88 and 1988–89 antidumping duty administrative reviews of TRBs from the PRC that it would be basing these results on best information available (BIA) because the information submitted by Premier was inadequate. The rate selected as BIA by the Department was the margin rate calculated for Premier in the Final Determination of Sales at Less than Fair Value: Tapered Roller Bearings and Parts Thereof from the People's Republic of China (52 FR 19748 (May 27, 1987)). The Department believed that this rate was the most appropriate basis for BIA in these reviews because (1) The margin was based on verified information submitted by Premier in the original investigation, and (2) respondent had attempted to cooperate with the Department in these proceedings.

Both petitioner and respondent have commented on the Department's use of this margin as BIA (See Comment 2 of the Analysis of Comments Received section of this notice). Petitioner has also proposed four alternative methodologies to be used as BIA (See Comments 3 and 4 of the Analysis of Comments Received section of this notice). However, petitioner has not persuaded the Department that any of these alternative methodologies offer a more reliable basis for BIA in this case than that used in the preliminary results. Likewise, respondent's argument that the information it presented during the course of the two administrative reviews should be used for purposes of the final results (See Comment 1 of the Analysis of Comments Received section of this notice) is without merit. The information submitted by respondent on the record has not been modified since the preliminary results, and therefore remains inadequate. After an analysis of both parties' comments and all of the information on the record, the Department has determined that the 0.97 rate continues to be the best information available. Accordingly, we are using this rate in the final results of these two administrative reviews.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received case and rebuttal briefs from the respondent and the petitioner. We also received a case brief from an interested party, Peer Bearing Company.

Comment 1

Respondent argues that the Department should base its final results on the information it submitted during the course of these two administrative reviews. Respondent contends that it has submitted for these reviews the same type of information accepted by the Department in the original investigation. Premier further states that it has provided extensive information on these sales, including sufficient information to enable the Department to select the most similar third country bearing to each U.S. bearing, in those cases where no identical comparison can be found. Respondent states that even if the Department decides that it cannot use Premier's information on similar product matches, the sales of identical bearings provide an adequate basis for sampling in this case.

Petitioner argues that the data submitted by Premier are unusable. Petitioner states that the respondent did not provide matching information for every U.S. and appropriate third country bearing, nor did respondent provide the acquisition cost information requested by the Department. Petitioner also asserts that the Department should not limit its analysis to matches of identical bearings because this "sampling" technique has nothing to do with scientific sampling or representative transactions. Therefore, the Department should continue to reject respondent's information.

DOC Position

We agree with petitioner. Respondent did not supply the list of the five matching characteristics requested for every U.S. and third country bearing, nor did it report the acquisition cost of the bearings which may have been used as the basis for difference in merchandise adjustments. Because of this, it is impossible for the Department to use respondent's information for purposes of determining identical matches, or the most similar third country bearing with which to match every U.S. bearing. Nor is it possible to

calculate an adjustment for differences in physical characteristics of similar merchandise as required by section 773(a)(4)(C) of the Act. Regarding the use of identicals only, section 777A(b) of the Act requires that any sample or average used shall be representative of the transactions under investigation. Respondent has not provided any information that would lead us to conclude that the use of identical comparisons only would form an adequate basis for a representative sample. Furthermore, even if the comparison of identicals only was considered representative, respondent has not provided the product characteristics necessary for us to determine identical merchandise.

Comment 2

Respondent argues that if the Department decides that it must use BIA, the rate applied in the preliminary results is the most appropriate. Respondent notes that the price information in the original investigation was verified by the Department. Respondent, arguing that the Department has the discretion to consider the extent of a respondent's cooperation in choosing the appropriate BIA rate, contends that the selection of BIA rates should be made on a case-by-case basis, after an analysis of the information on the administrative record. Respondent argues that, since it cooperated with the Department, a punitive BIA margin would be inappropriate. Respondent states that it furnished extensive information on model matches, and submitted the substance of the information requested for the Y2 factor (one of the five essential product characteristics). Respondent therefore claims that it made every attempt to supply requested information. However, it was unable to provide the acquisition cost information because it purchased bearings from several suppliers.

Finally, respondent argues that the Department's choice of BIA in the preliminary determination is consistent with past determinations, e.g., Final Result of Antidumping Duty Administrative Review: Television Receivers, Monochrome and Color, from Japan (55 FR 35916 (September 4, 1990)). A punitive BIA rate was not justified in other proceedings with facts analogous to the facts presented in these reviews. These proceedings involved cases where the respondent: (1) Was unable to participate in the investigation due to circumstances beyond its control; (2) attempted to cooperate but were unable to provide an adequate and verified questionnaire response; or (3) provided substantially complete and verified responses but failed to provide certain requested information in a timely manner or in the form required. When these factors were taken into consideration, respondent notes that the Department did not apply the most punitive BIA rate.

Petitioner argues that respondent has refused to furnish the information requested by the Department necessary for calculation of the dumping margins. Petitioner notes that the responses submitted by Premier did not include the five matching characteristics for every U.S. and third country bearing that was requested by the Department, information crucial for product matching. Petitioner further argues that: (1) The data Premier did not furnish in these reviews were within the control of Premier to furnish; (2) the information withheld by Premier precludes the Department from making use of the information Premier did submit; (3) the information withheld was done so purposely to prevent the disclosure of the true extent or dumping during the review periods; (4) any "cooperation" by Premier was purely illusory; (5) Premier's actions in this case are inconsistent with a conclusion that Premier attempted to cooperate; (6) an application of the rate from the preliminary determinations will discourage respondent from cooperating in the future; and, (7) it would be bad policy, at least with the facts in this case, for the Department to determine that a party cooperated merely by permitting the submission of any information at all. For these reasons, petitioner argues that the Department should not apply a benign BIA rate.

DOC Position

We agree with respondent that the proper BIA rate is the one found for Premier in the original investigation. This rate was calculated from verified information in that investigation. Furthermore, the Department believes that respondent attempted to cooperate in these reviews. Although respondent was not able to follow completely the model matching directions specified by the Department, it is apparent from the record in these proceedings that Premier made an effort to be responsive. We disagree with petitioner that respondent intentionally withheld this information "to prevent the disclosure of the true extent of dumping during the review periods." The totality of information on the record does not support this claim. With respect to petitioner's concern about Premier's cooperation in future administrative reviews, the circumstances of each administrative review vary and decisions regarding the use of BIA are made on a case-by-case basis. If a BIA rate in a future review becomes necessary, the rate selected will depend on various factors, including the level of cooperation by respondent. Indeed, we would anticipate that if the same deficiencies are found in the data in a subsequent review, it is likely that any BIA margin would be more adverse.

Comment 3

Petitioner contends that the rate calculated upon remand for the PRC exporter of TRBs, the China National Machinery Import and Export Corporation (CMEC), would be a more reasonable basis for BIA than the rate found for Premier in the same investigation. Petitioner states that this margin was calculated from the original source of the merchandise, rather than from a reseller. Petitioner also contends that this rate would also be more likely to encourage future cooperation from respondent.

Respondent argues that this rate would be inappropriate since CMEC is a state-controlled-economy supplier, and therefore, the dumping margin found in the original investigation was based on surrogate information, which has no relationship to Premier's sales.

DOC Position

We agree with respondent. In the original investigation, the foreign market value for CMEC was based on the factors of production reported by the PRC producers. These factors were then valued using surrogate country information. Premier's sales have no relationship to this surrogate information used to calculate the dumping margin for CMEC. Petitioner's inference that it is preferable to use a rate calculated from the original source of the merchandise, rather than from a reseller, is without merit.

Comment 4

Petitioner proposed several additional methodologies for calculating a BIA rate that "results in a more reasonable alternative to the margin rate calculated for Premier in the original investigation." First, petitioner argues that the margins contained in the petition are the most reasonable basis for BIA. Petitioner states that according to § 353.37(a) of the regulations, the best information available may include the factual information submitted in support of the petition. One margin suggested by

petitioner is the average margin of 115.9%, stated publicly in the petition. In the event Premier's actual data would show lower margins, the 115.9% rate would be sufficient to ensure timely submissions in future administrative reviews. Petitioner further states that the proposed method for BIA is conservative in comparison with the Department's practice of taking the highest margin contained in the petition for each of the product types in the final determination of Industrial Belts from Japan (54 FR 15485). Alternatively, petitioner urges the Department to calculate margins for Premier's U.S. sales that were misreported as third country sales. Finally, petitioner states that a margin could be calculated that comes closer to the margins alleged in the petition by using high volume transactions and looking at high-volume part numbers from respondent's sales information.

Respondent contends that the Department is not required to use information submitted in support of the petition as BIA. Respondent argues that the rate proposed by petitioner is unverified, out of date and that its cooperation in these reviews does not merit application of an adverse BIA rate.

Regarding petitioner's second methodology, respondent argues that petitioner's basis for calculating dumping margins is incomplete and inaccurate. For example, exhibit 4 of petitioner's case brief contains calculations only for those sales that were incorrectly reported as third country sales.

Regarding petitioner's third methodology, respondent states that in exhibit 5, petitioner calculated Premier's margins on a highly selective and incomplete basis. Petitioner compared only three part numbers out of the 22 sold in the United States during the 1987–88 review period that have identical third country matches, and only seven of the 36 part numbers sold to the United States during the 1988–89 review period that have identical third country matches. Further, the comparisons selected by Timken are not complete. Respondent also contends that petitioner's calculations contain numerous errors. Although petitioner claims to have used the price information submitted by Premier, it miscalculated Premier's net U.S. prices in 28 out of 48 sales it had selected for the 1987–88 period.

DOC Position

We agree with respondent. The rate contained in the petition has not been verified. The 0.97 margin used for these final results is based on information verified in the original investigation. Furthermore, an application of the rate found in the petition is not appropriate given the level of cooperation exhibited by respondent. In addition, there is no basis for the Department to base a margin solely on U.S. sales that were misreported as third country sales, while ignoring all other reported sales. Likewise, it would be inappropriate for the Department to base a margin on high-volume part numbers from respondent's sales information, while disallowing all other sales.

Final Results of the Reviews

As a result of our reviews, we determine the margin to be:

Manufacturer/ exporter	Review period	Margin (percent)
Premier	2/06/87–5/31/88	0.97
Premier	6/01/88–5/31/89	0.97

The Department will instruct the Customs Service to assess antidumping duties at that rate on all appropriate entries. Individual differences between United States Price and Foreign Market Value may vary from the percentage stated above. The Department will issue appraisement instructions concerning Premier directly to the Customs Service.

Furthermore, as provided for in section 751(a)(1) of the act, the Department will require a cash deposit of estimated antidumping duties based on the above margin on entries of this merchandise from Premier. For any entries of this merchandise from a new exporter, whose first shipments occurred after May 31, 1989, and who is unrelated to the reviewed firm or any previously reviewed firm, a cash deposit of 0.97 percent shall be required. This deposit requirement is effective for all shipments of TRBs from the PRC entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22(c)(8) of the Department's regulations (19 CFR 353.22(c)(8)(1990)).

Dated: December 24, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90–30605 Filed 12–31–90; 8:45 am]

BILLING CODE 3510-DS-M

[C-333-502]

Deformed Steel Concrete Reinforcing Bar (REBAR) From Peru; Determination Not To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on rebar from Peru.

EFFECTIVE DATE: January 2, 1991.

FOR FURTHER INFORMATION CONTACT: Beth Chalecki or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION: On October 31, 1990, the Department of Commerce ("the Department") published in the **Federal Register** (55 FR 45834) its intent to revoke the countervailing duty order on rebar from Peru (40 FR 48819; November 27, 1985). On November 29, 1990, Chaparral Steel Company objected to our intent to revoke the order. Therefore, in accordance with 19 CFR 355.25(d)(4)(iii), we will not revoke the order.

Dated: December 21, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90–30603 Filed 12–31–90; 8:45 am]

BILLING CODE 3510-DS-M

[C-549-503]

Rice From Thailand; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Final results of countervailing duty administrative review.

SUMMARY: On June 25, 1990, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on rice from Thailand. We have now completed that review and determine the total bounty or grant during the period January 27, 1986 through December 31, 1986 to be 0.35 percent *ad valorem*. In accordance with 19 CFR

355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

EFFECTIVE DATE: January 2, 1991.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On June 25, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 25856) the preliminary results of its administrative review of the countervailing duty order on rice from Thailand (51 FR 12356; April 10, 1986.) The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of Thai rice including rice in the husk (paddy or rough); husked (brown) rice including basmati and other; semi-milled or wholly-milled rice, whether or not polished or glazed, inlcuding parboiled and other; and broken rice. During the review period, such merchandise was classifiable under item numbers 130.5000, 130.5600, 130.5800, 131.3000 and 131.3300 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under item numbers 1006.10.00, 1006.20.20, 1006.20.40, 1006.30.10, 1006.30.90 and 1006.40.00 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 27, 1986 through December 31, 1986 and twelve programs: (1) Export Packing and Stocking Credits, (2) Public Warehouse Organization, (3) Marketing Organization for Farmers, (4) Agricultural Cooperative Federation of Thailand, (5) Market Intervention Program of the Ministry of Interior, (6) Paddy Rice Mortgage Program, (7) Paddy Rice Raising Project and Compensatory Interest Payments Program for Millers, (8) Supplementary Program to Implement the Government's Rice Policy—Preferential Financing to Rice Millers, (9) Incentives for International Trading Firms, (10) Tax Certificates for Exporters, (11) Export Processing Zones, and (12) Export Promotion Fund.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from the petitioner and respondent.

Comment 1: The respondent asserts that the Department, by using the domestic value of milled rice to calculate the benefit, overstated the benefit from the subsidy programs to the millers. By using domestic prices, the Department failed to account for the fact that the rice does not go directly from the millers to the U.S. market. To calculate the benefit from these programs, the respondent proposes that the Department adjust the benefit calculation by using the average price of rice exported to the United States which includes the trading company's mark-up.

Department's position: We agree. Countervailing duties are assessed on the exported value of rice. Therefore, we have adjusted our calculations to reflect the difference between the average domestic price for milled rice (which was the basis of our calculation of the benefit to the millers) and the average export price of rice to the United States. Consequently, the benefits from the Compensatory Interest Payments Program for Millers and the Preferential Financing Program to Rice Millers are 0.0051 percent *ad valorem* and 0.0005 percent *ad valorem*, respectively. *See also* Comments 4 and 6 of this notice.

Comment 2: The respondent argues that petitioner's claim that higher prices paid to paddy farmers under the ACFT, MOI and MOF programs provide a subsidy on milled rice is inappropriate. The respondent asserts that the higher prices paid to paddy farmers did not decrease, but in fact increased, the cost of milled rice. Therefore, there was no competitive benefit bestowed on milled rice. Further, the provisions of section 771B of the Tariff Act cannot be applied in this case because section 771B was not in effect during the review period and the limited-value-added test is not satisfied.

Department's position: We disagree. The Department determines that these programs provided benefits to paddy farmers, the producers of the raw agricultural product in this case. There is no requirement in the countervailing duty law that in this type of situation, the benefit from a program must result in a lowering of the price of the raw agricultural product in order for the program to be countervailable. Although section 771B was implemented after the review period, its purpose was to codify the Department's practice and it constitutes an integral part of the statute that the Department administers. See House Conf. Rep. No. 100–576, 1988 U.S. Code Cong. Adm. News, p. 1547, 1621.

In the Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Rice from Thailand (Final Determination), (54 FR 12356; April 10, 1986)), the Department determined that there is a single, continuous line of production from paddy rice to milled rice. In this review, the Department established that the difference between paddy rice and milled rice in terms of price is 30 percent which must include the cost of milling operations, selling costs, and profits. Milling operations, consisting primarily of parboiling, removing the rice hulls, and removing the bran layer, do not change the essential character of the rice. As a result, the Department established that the processing operation itself adds only limited value to the raw commodity, because the processing has not changed the essential character of the rice. Therefore, we determine that subsidies found to be provided to paddy rice are deemed to be provided with respect to the manufacture, production, or exportation of milled rice in accordance with Department's practice as codified in section 771B of the Tariff Act.

Comment 3: The petitioner asserts that the Department erred in the calculation of the benefit bestowed by the Export Packing and Stocking Credit (EPC) program. The petitioner claims that the questionnaire response (1) Reported loans for shipments made during the review period rather than loan repayments made during the review period, and (2) that the Department did not consider the benefit from loans made prior to the review period but repaid during the review period.

The respondent argues that the Department correctly calculated the benefit from the EPCs in the preliminary results because all loans issued prior to the review period had interest prepaid. Therefore, only loans issued during the review period with interest payments due during the review period provided a countervailable benefit.

Department's position: The Department considers a benefit from a loan to occur when an interest payment is due. We verified that under new Bank of Thailand (BOT) regulations dated January 2, 1986, interest on the EPCs is paid on the due date of the loan. Prior to the new regulations, interest was paid at the time the loan was issued. Therefore, on loans made prior to the review period, interest was prepaid and no interest payments on them were due

during the review period. In calculating the benefit, we included all loans with interest payments due during the review period.

Comment 4: The petitioner contends that all three Marketing Organization for Farmers (MOF) programs operating during the review period provided direct subsidies to the producers of paddy rice because the MOF purchased or accepted payment in paddy rice directly from the producers at above market prices. Pursuant to section 771B of the Tariff Act, the petitioner argues that these programs must be deemed to have provided subsidies to the production and exportation of milled rice.

The respondent maintains that because none of the rice purchased under these programs was exported to the United States, there was no countervailable benefit under this program.

Department's position: We verified that under the Payment-in-Kind Program and the 1:1 Paddy Rice Purchase Program, the MOF accepted and purchased paddy rice at the prevailing market price. Therefore, we determine that these programs did not provide countervailable benefits to milled rice.

Under the Supplemental Program to Purchase Paddy Rice from Farmers, the MOF purchased paddy rice at about 10 percent above the prevailing market price. We determine that the producer of paddy rice received a benefit from this program in the form of a higher gate price for his paddy rice. The Department considers any domestic subsidy provided to producers of paddy rice to be provided to the production or exportation of milled rice (See Comment 2). To calculate the benefit from this program, we multiplied the difference between the average farm gate price and the MOF price for paddy rice by the volume of paddy rice purchased by the MOF under this program and allocated the result over the value of sales of milled rice during the review period. We then adjusted this benefit to reflect the difference between the average domestic price for rice and the average export price of rice to the Untied States. On this basis, we determine the benefit from this program to be 0.11 percent *ad valorem* during the review period.

Comment 5: The petitioner asserts that the Department erred in its conclusion that the preferential loans received by the Agricultural Cooperative Federation of Thailand (ACFT) were not used to purchase paddy rice. Based on data obtained from the questionnaire response, the petitioner maintains that the loans were used to purchase paddy rice and that the paddy rice producers received a benefit from this program in the form of a higher gate price for paddy rice.

The respondent states that these loans are not countervailable because none of the loans were due during the review period. The respondent also maintains that because none of the rice purchased under these programs was exported to the United States, there was no countervailable benefit under this program.

Department's position: We disagree with the petitioner. We verified that, during the review period, none of the ACFT loans were used for purchasing paddy rice. Furthermore, we also verified that none of the loans were due or repaid during the review period. Therefore, the Department determines that no countervailable benefit was provided from these loans during the review period.

Comment 6: The petitioner asserts that the Department erred in not analyzing the preferential loans made to millers by the Ministry of Interior (MOE). The petitioner maintains that the loans enabled millers to buy paddy rice at above local market prices and therefore the producers of paddy rice received a benefit. Therefore, the petitioner argues that the MOI program should be deemed to have provided subsidies with respect to the production and exportation of milled rice.

The respondent states that the benefits received by the millers from the preferential loans under this program were offset by the higher prices paid to paddy rice producers. Respondent implies that the net subsidy is lower because millers must pay a higher price than the local market price to participate in the loan program.

Department's position: We agree with the petitioner. Loans were provided by the MOI to compensate millers for purchasing rice at above market prices from needy paddy farmers who produced less than 10 tons of paddy rice each year and lived in remote areas of Thailand. Because this loan program was limited to a specific group and the interest rate was inconsistent with commercial considerations, we determine that this program provided countervailable benefits to the rice millers during the review period.

The rice millers received preferential loans for the purpose of buying paddy at a price decreed by the government to be higher than market prices. There is no provision in the Tariff Act which allows an offset such as that claimed by respondent. The millers paid no application fee, deposit, or similar payment to receive the loans; there was no deferred receipt mandated by the government; and there were no export taxes, duties, or other charges levied on the export of this merchandise specifically intended to offset the subsidy received. See section 771(6) of the Tariff Act. Therefore, no offset was made.

To calculate the benefit of the preferential loans to the millers from this program, we used as our benchmark the verified weighted-average interest rate of 12.27 (Preliminary Results of Countervailing Duty Administrative Review; Rice From Thailand), (55 JR 25856; June 25, 1990)). We allocated the interest due at the benchmark rate over the value of milled rice and then adjusted this benefit to reflect the difference between the average domestic price for rice and the average export price of rice to the United States. On this basis, we determine the benefit from this program to be 0.01 percent *ad valorem* during the review period.

We also determine that the producer of paddy rice received a benefit from this program in the form of a higher gate price for his paddy rice. As noted in Comment 2, the Department considers any domestic subsidy provided to producers of paddy rice to be provided to the production or exportation of milled rice.

To calculate the benefit to the paddy rice producers from this program, we multiplied the difference between the average farm gate price and the MOI price for paddy rice by the volume of paddy rice purchased by the MOI under this program and allocated the result over the value of sales of milled rice during the review period. We then adjusted this benefit to reflect the difference between the average export price of rice to the United States. On this basis, we determine the benefit from this program to be 0.0005 percent *ad valorem* during the review period.

Comment 7: The petitioner alleges that the Department erred in the Final Determination that the construction of irrigation facilities by the Thai government did not provide a countervailable benefit to the producers of rice. The petitioner asserts that documentation submitted in this review shows that other crops benefit only incidentally from using facilities that were built almost exclusively for the use of rice producers and argues that the government-subsidized irrigation system: (1) Was intended to benefit rice production; (2) was targeted to areas primarily suitable for rice production; and (3) was used primarily (95 percent) for rice production. Therefore, the Department should determine that the construction of irrigation facilities

conferred a countervailable benefit on the producers and exporters of rice.

The respondent contends that the petitioner presented no new data on changed circumstances with respect to these programs that would warrant the Department to change its position from the Final Determination.

Department's position: The Department does not reexamine programs previously found out countervailable unless there is evidence of a change in the program or its application. The documentation submitted by the petitioner presented no new information regarding the Thai government's irrigation programs. Therefore, the Department continues to uphold its position in the Final Determination that this program is not countervailable.

Comment 8: The petitioner submits that the Department erred in not reexamining the fertilizer programs determined not to be countervailable in the Final Determination. The petitioner contends that the documentation submitted during the review period demonstrates that the principal purpose of the MOF, the BAAC and the ACFT fertilizer programs is to benefit rice production by providing fertilizer at below market prices.

The respondent contends that the petitioner presented no new data on changed circumstances with respect to these programs that would warrant the Department to change its position from the Final Determination.

Department's position: We disagree with the petitioner. The documentation submitted by petitioner presented no new information regarding the Thai government's fertilizer programs. Therefore, the Department continues to uphold its position in the Final Determination that these programs are not countervailable.

Comment 9: The petitioner argues that the deposit rate should be adjusted to reflect the activation/reactivation of programs immediately after the review period. The petitioner points out that the questionnaire response states that the MOF Supplementary Program, the MOF Payment-in-Kind and 1:1 programs, the ACFT credit for cooperative program, and the MOI program to assist paddy farmers were all extended into 1987 and the Paddy Rice Mortgage Program was reactivated.

The respondent argues that adjustments to the duty deposit rate are made only in cases in which program-wide changes have occurred prior to the preliminary results and where the changes are verifiable.

Department's position: The Department will adjust the duty deposit rate in cases where (1) Program-wide changes have occurred subsequent to a review period but before the issuance of the preliminary results of review, and (2) where the changes are quantifiable. Because we have no basis for quantifying the future benefit from these programs, we have followed our long-standing practice of determining the deposit rate based upon the total bounties or grants found during the review period.

Final Results of Review

After considering the comments received, we determine the total bounty or grant during the period January 27, 1986 through December 31, 1986 to be 0.35 percent *ad valorem*. In accordance with 19 CFR 355.7, any benefit less than 0.50 *ad valorem* is *de minimis*.

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after January 27, 1986 and exported on or before December 31, 1986.

Further, the Department will instruct the Customs Service to waive the collection of cash deposits of estimated countervailing duties on shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This waiver shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: December 24, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-30604 Filed 12-31-90; 8:45 am]

BILLING CODE 3510-DS-M

[C-357-048]

Certain Textiles and Textile Products From Argentina; Determination Not To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on certain textiles and textile products from Argentina, specifically men's and boys' woolen garments.

EFFECTIVE DATE: January 2, 1991.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: On October 31, 1990, the Department of Commerce ("the Department") published in the **Federal Register** (55 FR 45834) its intent to revoke the countervailing duty order on certain textiles and textile products from Argentina (48 FR 53421; November 16, 1978). In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. We had not received a request for an administrative review of the order for the last four consecutive annual anniversary months.

On November 15, 1990, the Amalgamated Clothing and Textile Workers Union objected to our intent to revoke the order. Therefore, we no longer intend to revoke the order.

This notice is in accordance with 19 CFR 355.25(d).

Dated: December 24, 1990.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 90-30602 Filed 12-31-90; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications; New Mexico

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under statutory authority (15 USC 1512) and Executive Order 11625 its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a three-year period, subject to the availability of funds. The cost of performance for the first 12 months is estimated at $184,260 in Federal funds and a minimum of $32,516 in non-

Federal contributions for the budget period July 1, 1991 to June 30, 1992. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Albuquerque Standard Metropolitan Statistical Area (SMSA).

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes, and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms, offer a full range of management and technical assistance, and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive.

MBDC's shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDC's will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate after the initial competitive year for up to two additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as a MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is January 31, 1991. Applicants should mail the completed applications to the office specified in the project announcement. MBDA will accept only those applications (1) Which are received by the closing date or (2) which show acceptable evidence of mailing on or before the closing date. Acceptable evidence consists of (1) A legible U.S. Postal Service postmark or (2) a legible mail or courier service receipt dated on or before the closing date. Applications must be post marked on or before January 31, 1990. Anticipated processing time of this award is 120 days.

ADDRESSES: Dallas Regional Office, 1100 Commerce Street, suite 7B23, Dallas, Texas 75242–0790, (214) 767–8001.

FOR FURTHER INFORMATION CONTACT: Yvonne Guevara, Dallas Regional Office.

SUPPLEMENTARY INFORMATION: Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address. A pre-bid conference will be held on January 15, 1991 in the Federal Building at 517 Gold Avenue, room 1410 in Albuquerque, New Mexico at 9:30 a.m.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Notice: Applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of are made to pay the debt.

Notice: Section 319 of Public Law 101–121 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with specific contract, grant, or loan. A "Certification for Contracts, Grants Loans, and Cooperative Agreements" and the SF-LLL, "Disclosure of Lobbying Activities" (if applicable), is required.

Notice: Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR Part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Notice: Awards under this program shall be subject to all Federal and Departmental regulations, policies, and, procedures applicable to Federal assistance awards.

Notice: A false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Dated: December 27, 1990.

Melda Cabrera,

Regional Director, Dallas Regional Office.

[FR Doc. 90–30624 Filed 12–31–90; 8:45 am]

BILLING CODE 3510–24–M

Business Development Center Applications; Texas

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under statutory authority (15 USC 1512) and Executive Order 11625 its Minority Business Development Center (MBDC) Program to operate an BMDC for approximately a three-year period, subject to the availability of funds. The cost of performance for the first 12 months is estimated at $276,250 in Federal funds and a minimum of $48,750 in non-Federal contributions for the budget period July 1, 1991 to June 30, 1992. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the San Antonio Standard Metropolitan Statistical Area (SMSA).

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes, and educational institutions.

The MNDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms, offer a full range of management and technical assistance, and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: The experience and

capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority business, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements including in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive.

MBDC's shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour. MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate after the initial competitive year for up to two additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as a MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is January 31, 1991. Applicants should mail the completed applications to the office specified in the project announcement. MBDA will accept only those applications (1) Which are received by the closing date or (2) which show acceptable evidence of mailing on or before the closing date. Acceptable evidence consists of (1) A legible U.S. Postal Service postmark or (2) a legible mail or courier service receipt dated on or before January 31, 1990. Anticipated processing time of this award is 120 days.

ADDRESSES: Dallas Regional Office, 1100 Commerce Street, suite 7B23, Dallas, Texas 75242–0790, (214) 767–8001.

FOR FURTHER INFORMATION CONTACT: Yvonne Guevara, Dallas Regional Office.

SUPPLEMENTARY INFORMATION: Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address. A pre-bid conference will be held on January 15, 1991, in the Federal Building at 727 E. Durango, room B120 in San Antonio, Texas at 9:30 a.m.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Notice: Applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangement satisfactory to the Department of are made to pay the debt.

Notice: Section 319 of Public Law 101–121 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with specific contract, grant, or loan. A "Certification for Contracts, Grants Loans, and Cooperative Agreements" and the SF–LLL, "Disclosure of Lobbying Activities" (if applicable), is required.

Notice: Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Notice: Awards under this program shall be subject to all Federal and Department regulations, policies, and, procedures applicable to Federal assistance awards.

Notice: A false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Dated: December 27, 1990.

Melda Cabrera,

Regional Director, Dallas Regional Office.

[FR Doc. 90–30625 Filed 12–31–90; 8:45 am]

BILLING CODE 3510–24–M

National Oceanic and Atmospheric Administration

Atlantic Sea Scallop Fishery; Public Hearings

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

ACTION: Extension of comment period.

SUMMARY: The New England Fishery Management Council (Council) recently held public hearings throughout New England and the Mid-Atlantic areas to receive comments on Amendment 4 to the Atlantic Sea Scallop Fishery Management Plan (see 55 FR 49404, November 28, 1990 for more information and dates of hearings). Written comments on these hearings were to be submitted to the Council on or before December 31, 1990, a date that did not provide adequate opportunity for public comment. The Council, therefore, extends the comment period for receipt of written comments on these hearings to January 31, 1991.

DATES: Written comments must be submitted on or before January 31, 1991.

ADDRESSES: Written comments should be sent to Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906. Clearly mark the outside of the envelope "Atlantic Sea Scallop Amendment 4."

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, (617)–231–0422.

Dated: December 20, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–30545 Filed 12–31–90; 8:45 am]

BILLING CODE 3510–22–M.

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council and its Committees will meet on January 21–24, 1991, at the Westin Oaks Hotel, 5011 Westheimer, Houston, TX. Except as noted below, the meetings are open to the public.

Council: The Council will begin its meeting on January 23 at 8:30 a.m., and recess at 5 p.m. The agenda is as follows: (1) *From 8:45 a.m., to 9:45 a.m.,* public testimony on Amendment number 5 to the Shrimp Fishery Management Plan (FMP), the Texas cooperative closure, and a control date for entry into the shrimp fishery; (2) *from 9:45 a.m., to 10:15 a.m.,* discussion of Amendment number 5 to the Shrimp FMP; (3) *From 10:15 a.m., to 10:30 a.m.,* discussion of the Texas closure; (4) *from 10:30 a.m., to 11:15 a.m.,* discussion of other shrimp cooperative closures; (5) *from 11:15 a.m., to 11:30 a.m.,* discussion of a control date for entry into the shrimp fishery; (6) *from 1 p.m., to 2:30 p.m.,* discussion of a shrimp bycatch amendment; (7) *from 2:30 p.m., to 3 p.m.,* public testimony on Amendment number 3 to the Reef Fish

FMP; (8) *from 3 p.m., to 4:30 p.m.,* discussion of Committee recommendations for reef fish. From 4:30 p.m., to 5 p.m., the Council's Personnel Committee will hold a closed session (not open to the public). The Council will reconvene on January 24 at 8:30 a.m., of review the Secretarial Shark FMP; hear reports from its Habitat Protection, Advisory Panel (AP) Selection, and Enforcement Committees, as well as a report from the Director. The Council will adjourn at noon.

Committees: On January 21 at 1 p.m., the Council's AP Selection, Reef Fish Management, Habitat Protection and Personnel Committees will begin meeting (the Personnel Committee's meeting will be closed to the public). The Committees will adjourn at 5 p.m. On January 22 at 8 a.m., the Council's Shark Management and Shrimp Management Committees will begin meeting, and will adjourn at 5:30 p.m.

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 881, Tampa, FL; telephone: (813) 228–2815.

Dated: December 26, 1990.

David S. Crestin,

Deputy Directory, Office of Fisherics Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–30544 Filed 12–31–90; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

TITLE, APPLICABLE FORM AND APPLICABLE OMB CONTROL NUMBER: DIS Courtesy Letter, DIS FL–2a and DIS FL–2b, OMB Control No. 0704–0172.

Type of Request: Reinstatement

Average Burden Hours/Minutes Per Response: 0.1 hour

Responses Per Respondent: 1

Number of Respondents: 14,670

Annual Burden Hours: 1,467

Annual Responses: 14,670

Needs and Uses: The Defense Investigative Service (DIS) is responsible for conducting personnel security investigations (PSIs) to determine an individual's suitability for a position of trust. This form is sent to reference interviewed by the agent as a follow-up device to ascertain the professionalism and integrity of the investigator work force. The information collected serves to identify problem areas, the investigation of which lead to administrative, disciplinary, or additional training actions.

Affected Public: Individuals or Households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at the Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

Dated: December 27, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–30583 Filed 12–31–90; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary

Defense Science Board Task Force on Review of the B–2

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force on Review of the B–2 will meet in closed session on January 15 and 16, 1991.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will review the B–2 program with emphasis on the flight test program and reductions of program costs.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II, (1988)) it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: December 27, 1990.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–30599 Filed 12–31–90; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of forthcoming teleconference meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of the meeting.

DATES: January 29, 1991.

LOCATION: National Assessment Governing Board, suite 7322, 1100 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, suite 7322, 1100 L Street NW., Washington, DC, 20005–4013, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION CONTACT: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III–C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 USC 1221e–1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons. On January 29, 1991, a teleconference involving the full Board will begin at 3 p.m. and end at 6 p.m. The Board will

review the recommendations from the joint Executive and Achievement Levels Committees and take final action on the achievement levels for reporting the 1990 NAEP math results. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Board's deliberations.

A summary of the activities and related matters, which are informative to the public and consistent with the policy of 5 U.S.C. 552b, will be available to the public within fourteen days after the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, suite 7322, 1100 L Street NW., Washington, DC, from 8:30 a.m. to 5 p.m.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 90–30549 Filed 12–31–90; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board Task Force on the Department of Energy National Laboratories; Open and Closed Meetings

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, as amended), notice is hereby given of the following advisory committee task force meetings:

Name: Secretary of Energy Advisory Board Task Force on the Department of Energy National Laboratories.

Date and Time: Tuesday, January 8, 1991, 8:40 am–12:30 pm—Closed; Tuesday, January 8, 1991, 12:30 pm–5:30 pm—Open; Wednesday, January 9, 1991, 8:30 am–5:00 pm—Closed.

Place: Tuesday, January 8, 1991, 12:30–5:30 pm—Open; Room 1E–245, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW. Washington, DC 20585, Telephone: (202) 586–7092.

Contact: Dr. Robert M. Simon, Designated Federal Officer, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: (202) 586–7092.

Purpose: The Task Force will provide advice to the Secretary of Energy on the research, development, energy, and national defense responsibilities, activities, and operations of the Department of Energy's (DOE) National Laboratories and the Department's management of those laboratories.

Tentative Agenda

Tuesday, January 8, 1991

8:30 am Closed meeting.
12:30 pm Energy Research Program-Dedicated Laboratory Strategic Assessment and Vision, Directors, Program-Dedicated Laboratories (Fermi National Accelerator Laboratory lead).
4:00 pm Oak Ridge Associated Universities (ORAU) Strategic Assessment and Vision, Dr. Jon Veigel, President, ORAU.
4:30 pm Public comment period.
5:30 pm Adjourn.

Wednesday, January 9, 1991

8:30 am Closed meeting.

Public Participation: The meeting on the afternoon of January 8, 1991, is open to the public. The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business.

Persons wishing to attend the public meeting should contact Frances Musgrove at (202) 586–7092 by January 7 to arrange for visitor passes to the Forrestal Building.

Any member of the public who wishes to make an oral statement pertaining to agenda items should contact the Designated Federal Officer at the address or telephone number listed above. Requests must be received before 3 pm (e.s.t.) Monday, January 7, 1991, and reasonable provision will be made to include the presentation during the public comment period. It is requested that oral presenters provide 15 copies of their statements at the time of their presentations.

Written testimony pertaining to agenda items may be submitted prior to the meeting. Written testimony must be received by the Designated Federal Officer at the address shown above before 5 pm (e.s.t.) Monday, January 7, 1991, to assure it is considered by Task Force members during the meeting.

This notice is being published less than 15 days in advance of the meeting due to a delay in finalizing the location of the meeting.

Closed meeting: Pursuant to section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App.), and 42 U.S.C. 7234(b), on the morning of January 8, 1991, and on January 9, 1991, the meetings will be closed to the public in the interest of national security.

Minutes: A transcript of the open, public meeting will be available for public review and copying approximately 30 days following the meeting at the Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9 am and 4 pm, Monday through Friday except Federal holidays.

Issued: Washington, DC, on: December 27, 1990.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 90–30622 Filed 12–28–90; 9:49 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RP91–33–000]

ANR Pipeline Co.; Technical Conference

December 24, 1990.

Pursuant to the Commission's order issued on December 21, 1990, a technical conference will be held to resolve the issues raised in the above-captioned proceeding. The conference will be held on Wednesday, January 9, 1991 at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons and staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–30551 Filed 12–31–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP89–49–000 and CP89–1582–000]

National Fuel Gas Supply; Notice Rescheduling Informal Settlement Conference

December 24, 1990.

Take notice that the informal settlement conference scheduled to be held in these proceedings on January 18, 1991 has been canceled. This conference has been rescheduled for January 24, 1991, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The purpose of this conference will be to develop a new procedural schedule, as provided in the December 19, 1990 order of Presiding Judge George P. Lewnes. In that order, Judge Lewnes granted the unopposed motion of the Commission Staff to vacate the existing procedural schedule, inclusive of the February 5, 1991 hearing date previously established in Docket No. CP89–1582–000. Pursuant to Judge Lewnes' order, the parties will submit the revised

schedule for his approval on or before January 30, 1991.

Any party, as defined 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(c), is invited to attend. Persons to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulation. See 18 CFR 385.214 (1990).

For additional information, please contact Warrent C. Wood at (202) 208–2091 or Sandra J. Delude at (202) 208–2161.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–30550 Filed 12–31–90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. FA88–33–001]

Wisconsin Public Service Corp.; Filing

December 24, 1990.

Take notice that on October 29, 1990, Wisconsin Public Service Corporation (Wisconsin) tendered for filing its refund report in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 7, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–30552 Filed 12–31–90; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3895–3]

Water Pollution Control; Final Determination of the Assistant Administrator for Water Pursuant to Section 404(c) of the Clean Water Act Concerning the Two Forks Water Supply Impoundments in Jefferson and Douglas Counties, CO

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of decision to prohibit the designation of waters of the United States on the South Platte River in Jefferson and Douglas Counties, Colorado, as a discharge site for the placement of dredged or fill material.

SUMMARY: This is notice of EPA's Final Determination pursuant to section 404(c) of the Clean Water Act to prohibit the designation of waters of the United States, the South Platte River in Jefferson and Douglas Counties, Colorado, as a discharge site for the placement of dredged or fill material. EPA's determination is based upon a finding that the placement of dredged or fill material associated with implementation of the 1.1 million acre-foot Two Forks proposal, the 400,000 acre-foot Two Forks project and the 450,000 acre-foot corrective action proposal would result in unacceptable adverse impacts to fishery and recreational areas.

EFFECTIVE DATE: The effective date of the final determination is November 23, 1990.

FOR FURTHER INFORMATION CONTACT: William S. Garvey, Office of Wetlands Protection (A–104F) U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202) 475–7799.

Copies of EPA's Final Determination are available for inspection in the EPA Headquarters Public Information Reference Unit, EPA Library, room M2904, 401 M Street SW., Washington DC 20460 and the EPA Region VIII Library, U.S. EPA Region 8, 999 18th Street, Denver Place, Denver, Colorado 80202–2405.

SUPPLEMENTARY INFORMATION: Section 404(c) of the Clean Water Act (33 U.S.C. 1251 *et seq.*) provides that, if the Administrator of the U.S. Environmental Protection Agency (EPA) determines, after notice and opportunity for public comment, that an unacceptable adverse effect on municipal water supplies, shellfish beds, and fishery areas (including spawning and breeding areas), wildlife, or recreational areas would result from the discharge of dredged or fill material, he may exercise his authority to withdraw or prohibit the specification, or deny, restrict or withdraw the use for specification, of any defined area as a disposal site for dredged or fill material. Before making such a determination, the Administrator must consult with the Chief of the Army Corps of Engineers (Corps), the property owner(s), and the applicant where there has been an application for a section 404 permit. The procedures for implementation of section 404(c) are set forth in the Code of Federal Regulations, 40 CFR 231.

EPA's regulations for implementing section 404(c) establish procedures to be followed in exercising the Administrator's authority pursuant to that section. Three major milestones in the process are: (1) The Regional Administrator's proposed decision to withdraw, deny, restrict or prohibit the use of a site (Proposed Determination); (2) the Regional Administrator's recommendation to the Administrator to withdraw, deny, restrict or prohibit the use of a site (Recommended Determination); and (3) the Administrator's final decision to affirm, modify, or rescind the Regional recommendation (Final Determination). The Administrator has delegated the authority to make final decisions under section 404(c) to the Assistant Administrator for Water, who is EPA's national Clean Water Act section 404 program manager.

EPA's Final Determination concerns the proposed placement of dredged or fill material for the purpose of creating a dam and reservoir on the South Platte River approximately one mile downstream from the confluence of the mainstem of the South Platte with the North Fork of the South Platte.

On March 26, 1990 the EPA Region VIII Regional Decision Officer recommended prohibition of specification of the disposal site necessary for construction of any dam, lake or reservoir in the subject waters. The recommendation was based upon the Regional Decision Officer's finding that the discharge of materials in connection with the 1.1 million acre-foot Two Forks proposal and the 400,000 acre-foot project would have an unacceptable adverse effect on wildlife, fishery, and recreational areas.

EPA's Final Determination is based on consideration of the record developed in this case, including public comment submitted in response to the Regional Proposed Determination, comment received at the public hearing and comments from other Federal and State agencies. This final Determination also reflects comment and information received during EPA Headquarters' consultation pursuant to § 231.6 of the Clean Water Act section 404(c) regulations.

EPA's Final Determination concludes that the discharge of dredged or fill material associated with the proposed 1.1. million acre-foot Two Forks dam and water supply reservoir in the South Platte River in Jefferson and Douglas Counties, Colorado, as well as the 400,000 acre-foot project and 450,000

acre-foot corrective action proposal, would result in unacceptable adverse effects on fishery areas and recreational areas. This conclusion that the subject projects would have unacceptable adverse effects on fishery and recreational areas in based upon two independent grounds. First, EPA finds that the effects are unacceptable in light of the significant loss of or damage to these resources that would occur as a result of the subject projects, which loss and damage is avoidable because practicable, less environmentally damaging alternatives are available. Second, EPA has concluded that even if no less damaging practicable alternatives were available, the significance of the damage to fishery and recreation areas caused by the projects, even after consideration of the proposed mitigation, would be so great that they would constitute an unacceptable adverse effect under section 404(c). Based on these findings, the Final Determination prohibits, pursuant to section 404(c) of the Clean Water Act, the specification of the subject waters of the United States within the South Platte River as a discharge site for dredged or fill material for the purpose of creating any reservoir or impoundment as described in the Two Forks 1.1 million AF proposal, 400,000 acre-foot project and the proposed 450,000 acre-foot corrective action.

This Final Determination does not pertain to other types of filling activities. Other proposals involving the discharge of dredged or fill material in the waters of the United States at issue will be evaluated on their merits within the Corps of Engineers' section 404 regulatory program.

Dated: December 20, 1990.

LaJuana S. Wilcher,

Assistant Administrator for Water.

[FR Doc. 90–30601 Filed 12–31–90; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement no.: 212–011213–018

Title: Spain-Italy/Puerto Rico Island Pool Agreement

Parties:

Compania Trasatlantica Espanola, S.A.
d'Amico Societa de Navigazione, S.p.A.
Nordana Line A/S
Sea-Land Services, Inc.

Synopsis: The proposed amendment would provide that the members may suspend a Pool Section during the first 60 days of any pool period. In the event such suspension continues for 60 days or more, all rights and obligations accrued by any party to that Pool Section up to the date of suspension shall be null and void. Article 7.B.3(c), it would be renumbered to become Article 7.B.3(d), it would provide that all overcarriage penalties from previous pool periods shall be paid. A new Article 7.B.3(c) would provide that a member may withdraw from the Spanish Pool Section, effective June 30, 1991, upon 30 days' notice.

Agreement no.: 203–011223–003

Title: Transpacific Stabilization Agreement

Parties:

American President Lines, Ltd.
Evergreen Marine Corp. (Taiwan) Ltd.
Hanjin Shipping Co., Ltd.
Hyundai Merchant Marine Co., Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Liner System, Ltd.
Nippon Yusen Kaisha
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Yangming Marine Transport Corp.

Synopsis: The proposed amendment would decrease the maximum allowed capacity from 85 percent to 82 percent.

By Order of the Federal Maritime Commission.

Dated: December 26, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–30546 Filed 12–31–90; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Current List of Laboratories Which Meet Minimum Standards to Engage in Urine Drug Testing for Federal Agencies

AGENCY: National Institute on Drug Abuse, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

FOR FURTHER INFORMATION CONTACT: Denise L. Goss, Program Assistant, Drug Testing Section, Division of Applied Research, National Institute on Drug Abuse, room 9–A–53, 5600 Fishers Lane, Rockville, Maryland 20857; tel.: (301)443–6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an onsite inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on site inspections.

Laboratories which claim to be in the applicant stage of NIDA certification are not to be considered as meeting the minimum requirements expressed in the NIDA Guidelines. A laboratory must have its letter of certification from HHS/NIDA which attests that it has met minimum standards.

In accordance with subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Alpha Medical Laboratory, Inc., 405 Alderson Street, Schofield, WI 54476, 800–627–8200
American BioTest Laboratories, Inc., Building 15, 3350 Scott Boulevard, Santa Clara, CA 95054, 408–727–5525
American Medical Laboratories, Inc., 11091 Main Street, P.O. Box 188, Fairfax, VA 22030, 703–691–9100
Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, Suite 250, Las Vegas, NV 89119–5412, 702–733–7866
Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787
Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414–355–4444/800–877–7016
Bio–Analytical Technologies, 2356 North Lincoln Avenue, Chicago, IL 60614, 312–880–6900
Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305–325–5810
Center for Human Toxicology, 417 Wakara Way–Room 290, University Research Park, Salt Lake City, UT 84108, 801–581–5117
Clinical Pathology Facility, Inc., 711 Bingham Street, Pittsburgh, PA 15203, 412–488–7500
Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800–445–6917
CompuChem Laboratories, Inc., 3308 Chapel Hill/Nelson Hwy., P.O. Box 12652, Research Triangle Park, NC 27709, 919–549–8263
Damon Clinical Laboratories, 140 East Ryan Road, Oak Creek, WI 53154, 800–365–3840 (name changed: formerly Chem–Bio Corporation; CBC Clinilab)
Damon Clinical Laboratories, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 214–929–0535
Doctors & Physicians Laboratory, 801 East Dixie Avenue, Leesburg, FL 32748, 904–787–9006
DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310
Eastern Laboratories, Ltd., 95 Seaview Boulevard, Port Washington, NY 11050, 516–625–9800
ElSohly Laboratories, Inc., 1215–½ Jackson Ave., Oxford, MS 38655, 601–236–2609
Environmental Health Research & Testing, Inc., 1075 South 13th St., Birmingham, AL 35205–9998, 205–934–0985
General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608–267–6267
Harris Medical Laboratory, P.O. Box 2981, 1401 Pennsylvania Avenue, Fort Worth, TX 76104, 817–878–5600
HealthCare/Preferred Laboratories, 24451 Telegraph Road, Southfield, MI 48034, 800–225–9414(outside MI)/800–328–4142(MI only)
Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672
Laboratory Specialists, Inc., P.O. Box 4350, Woodland Hills, CA 91365, 818–718–0115/800–331–8670(outside CA)/800–464–7081(CA only), (name changed: formerly Abused Drug Laboratories)
Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504–392–7961
Massey Analytical Laboratories, Inc., 2214 Main Street, Bridgeport, CT 06606, 203–334–6187
Mayo Medical Laboratories, 200 S.W. First Street, Rochester, MN 55905, 800–533–1710/507–284–3631
Med Arts Lab, 5419 South Western, Oklahoma City, OK 73109, 800–251–0089
Med-Chek Laboratories, Inc., 4900 Perry Highway, Pittsburgh, PA 15229, 412–931–7200
MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901–795–1515
MedTox Laboratories, Inc., 402 W. County Road D, St Paul, MN 55112, 612–636–7466
Mental Health Complex Laboratories, 9455 Watertown Plank Road, Milwaukee, WI 53226, 414–257–7439
Methodist Medical Center, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 309–672–4928
MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 708–595–3888
MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201–393–5000
MetWest-BPL Toxicology Laboratory, 18700 Oxnard Street, Tarzana, CA 91356, 800–492–0800/818–343–8191
National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 301–247–9100 (name changed: formerly Maryland Medical Laboratory, Inc.)
National Health Laboratories Inc., 2540 Empire Drive, Winston–Salem, NC 27103–6710, 919–760–4620/800–334–8627(outside NC)/800–642–0894(NC only)
National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800–251–9492
National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805–322–4250
Nichols Institute Substance Abuse Testing (NISAT), 8985 Balboa Avenue, San Diego, CA 92123, 800–446–4728/619–694–5050 (name changed: formerly Nichols Institute)
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361
Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400
PDLA, Inc., 100 Corporate Court, So. Plainfield, NJ 07080, 201–769–8500
PharmChem Laboratories, Inc., 1505–A O'Brien Drive, Menlo Park, CA 94025, 415–328–6200/800–446–5177
Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619–279–2600
Regional Toxicology Services, 15305 N.E. 40th Street, Redmond, WA 98052, 206–882–3400
Roche Biomedical Laboratories, 6370 Wilcox Road, Dublin, OH 43017, 614–889–1061. The certification of this laboratory (Roche Biomedical Laboratories, Dublin, OH) is suspended from conducting, confirmatory testing of amphetamines. The laboratory continues to meet all requirements for HHS/NIDA certification for testing urine specimens for marijuana, cocaine, opiates and phencyclidine. For more information, see 55 FR 50589 (Dec. 7, 1990).
Roche Biomedical Laboratories, 1801 First Avenue South, Birmingham, AL 35233, 205–581–3537
Roche Biomedical Laboratories, Inc., 1912 Alexander Drive, P.O. Box 13973, Research Triangle Park, NC 27709, 919–361–7770
Roche Biomedical Laboratories, Inc., 101 Inverness Drive East, Englewood, CO 80112, 303–792–2822
Roche Biomedical Laboratories, Inc., 1 Roche Drive, Raritan, NJ 08869, 800–631–5250
Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601–342–1286
S.E.D. Medical Laboratories, 500 Walter NE Suite 500, Albuquerque, NM 87102, 505–848–8800
SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708–885–2010 (name changed: formerly International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800–523–5447 (name changed: formerly SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404–934–9205 (name changed: formerly SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (name changed: formerly SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818–376–2520
South Bend Medical Foundation, Inc., 530 North Lafayette Boulevard, South Bend, IN 46601, 219–234–4176
Southgate Medical Laboratory, Inc., 21100 Southgate Park Boulevard, Cleveland, OH 44137, 800–338–0166
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 North Lee Street, Oklahoma City, OK 73102, 405–272–7052
St. Louis University Forensic Toxicology Laboratory, 3610 Rutgers Avenue, St. Louis, MO 63104, 314–577–8628

Charles R. Schuster,

Director, National Institute on Drug Abuse.

[FR Doc. 90–30600 Filed 12–31–90; 8:45 am]

BILLING CODE 4160–20–M

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

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:

Blood Products Advisory Committee

Date, time, and place. January 17 and 18, 1991, 8 a.m., Ramada Inn, Embassy Ballrooms I, II, and III, 8400 Wisconsin Ave., Bethesda, MD 20814.

Type of meeting and contact person. Open committee discussion, January 17, 1991, 8 a.m. to 11:30 a.m.; closed committee deliberations, 11:30 a.m. to 12 p.m.; open committee discussion, 12 p.m. to 5 p.m., January 18, 1991, 8:30 a.m. to 9:30 a.m.; closed committee discussion, 9:30 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 4:30 p.m.; open public hearing, 4:30 p.m. to 5:30 p.m., unless public participation does not last that long; Linda A. Smallwood, Division of Transfusion Science (HFB–900), Center for Biologics Evaluation and Research, Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301–496–4396.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

Open public hearing. Interested persons who wish to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the contact person listed above.

Agenda—Open committee discussion. On the morning of January 17, 1991, the committee will hear and discuss data on the public health issue concerning Yersinia infections in blood donations, and in the afternoon will hear presentations and discussions on donor deferral issues, and hear discussion on proposed criteria for human immunodeficiency virus (HIV) look-back concerning products and recipient notification. On the morning of January 18, 1991, the committee will sit as a medical device panel in accordance with the requirements of 21 CFR 814.40 and 814.44 and review and discuss the premarket approval application (PMA) for Anti-Hepatitis B Core assay (anti-HBc) IgM test kit (Abbott Laboratories), and hear discussion on anti-HBc testing: Donor deferral and re-entry issues. In the afternoon, the committee will hear and discuss blood product safety issues concerning anti-Hepatitis C Virus (anti-HCV) testing in source plasma donors.

Closed committee deliberations. The committee will discuss trade secret or confidential commercial information relevant to the anti-HIV–2 combination tests and the PMA for the anti-HBc assay. These portions will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Anesthetic and Life Support Drugs Advisory Committee

Date, time, and place. January 24 and 25, 1991, 8 a.m., Conference Rms. D&E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857.

Type of meeting and contact person. Open public hearing, January 24, 1991, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 5 p.m.; January 25, 1991, closed committee deliberations, 8 a.m. to 5:30 p.m.; Isaac F. Roubein, Center for Drug Evaluation and Research (HFD–9), Rm. 8B–45, 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 prescription drugs for use in the field of anesthesiology and surgery.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing. Those desiring to make formal presentations should notify the contact person before January 15, 1991, 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 24, 1991, the committee will discuss new drug application (NDA) 19–946, doxacurium chloride, Burroughs-Wellcome, for intravenous injection.

Closed committee deliberations. On January 25, 1991, the committee will review and discuss trade secrets or confidential information relevant to pending investigational new drug (IND) 32,484, IND 32,934 and IND 31,243 in the Office of Drug Evaluation and Research. The committee also will review confidential commercial information relevant to NDA 19–946. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b (c)(4)).

Ophthalmic Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. January 25, 1991, 9 a.m., First Floor Auditorium, 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., unless public participation does not last that long; open committee discussion, 10 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 5 p.m.; Daniel W. C. Brown, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1080.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational 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 9, 1991, 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 general issues relating to approvals of premarket approval applications (PMA's) for intraocular lenses (IOL's), contact lenses, and other class III surgical or diagnostic devices, and may discuss specific PMA's for these devices. The committee will also have general discussion regarding IOL labeling.

Closed committee deliberation. The committee may discuss trade secret and/or confidential commercial information relevant to the PMA's for IOL's, surgical or diagnostic devices, and contact lenses or other ophthalmic devices. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above 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. The dates and times reserved for the separate 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.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to signficantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: December 24, 1990.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 90–30568 Filed 12–31–90; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

Medicaid Program; Compliance Hearing: State of California Failure to Implement Certain Nursing Home Reform Provisions of the Omnibus Budget Reconciliation Act of 1987 (OBRA 87)

AGENCY: Health Care Financing Administration, HHS.

ACTION: Notice of compliance hearing.

SUMMARY: This notice announces a compliance hearing on Tuesday, February 12, 1991, in San Francisco, California, to determine whether the State of California, in the administration of its Medicaid State plan, has failed to comply with section 1902(a)(13)(A) of the Social Security Act (the Act), sections 1919(g)(1) and (g)(2) of the Act, and 42 CFR, parts 442.100, 447.252, 447.253 and 447.255.

CLOSING DATE: Requests to participate in the compliance hearing as a party must be received by January 17, 1991.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearings Staff, Suite 110, Security Office Park, 7000 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 597–3013.

SUPPLEMENTARY INFORMATION: This notice announces a compliance hearing to determine whether the State of California, in the administration of its Medicaid State plan, has failed to comply with section 1902(a)(13)(A) of the Act, sections 1919(g)(1) and (g)(2) of the Act, and 42 CFR, parts 442.100, 447.252, 447.253, and 447.255. Preliminary findings are that California (1) has failed to submit an approvable State plan amendment taking into account the facilities' costs of complying with the nursing home reform provisions of OBRA 87, as required by section 4211(b)(2) of OBRA 87, and (2) has failed to certify that nursing facilities are in compliance with OBRA 87 requirements.

Section 1904 of the Act and 42 CFR, part 430, subpart D, establish Department procedures that provide a compliance hearing for consideration that a State plan no longer complies with the provisions of section 1902 of the Act. HCFA is required to publish a copy of the notice to a State Medicaid agency which 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 which will be considered at the hearing, we will also publish 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 at 42 CFR 430.76(b). 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 at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

There are two issues in this matter. The first issue arises from the State's failure to submit an approvable State plan amendment (SPA) showing that the payment rates to nursing facilities take into account the facilities' costs of complying with the nursing home reform provisions of OBRA 87. Section 4211(b)(2) of OBRA 87 required each State to submit by April 1, 1990, an amendment to its payment plan for nursing facility services in order to be effective for services rendered on or after October 1, 1990. This section further required that such amendments submitted on or before April 1 must be reviewed by HCFA and approved or disapproved no later than September 30, 1990.

HCFA issued State Medicaid Manual Transmittal No. 16 in March 1990, which explained to States the statutory and regulatory requirements for submission of SPAs under the nursing home reform provisions of OBRA 87. These manual instructions explain in detail the assurances that States must submit, along with related information, to enable HCFA to determine whether a State's plan amendment meets the statutory and regulatory requirements of OBRA 87.

California submitted SPA No. 90–04 on March 30, 1990 to comply with the above requirements. The plan amendment lacked the assurances and related information that were necessary for review of the amendment, and the plan did not demonstrate that payments to nursing facilities took into account the additional costs incurred in complying with the new certification requirements of OBRA 87. The HCFA San Francisco Regional Office (RO) requested this additional information on June 29. The State's response on August 31 to the RO request was not adequate to enable HCFA to approve the SPA. A letter disapproving the SPA was sent to the State on September 29. On November 5, a meeting was held in the San Francisco RO to discuss the plan amendment disapproval and the survey issues in this matter. At this meeting, California submitted a draft of a proposed revision of the amendment it had submitted. However, at this time, the State does not have an approvable plan amendment, and therefore, it is out of compliance with 1902(a)(13)(A) of the Act.

The second issue arises from the failure of the State to survey nursing facilities in accordance with the provisions of OBRA 87. Section 1919(g)(1)(A) of the Act requires that States certify, in accordance with surveys conducted under 1919(g)(2) of the Act, the compliance of nursing facilities with the requirements contained in sections 1919(b), (c), and (d) of the Act. On October 1, 1990, the State confirmed in writing to skilled nursing facilities and intermediate care facilities in the State that on October 1 they would continue to be subject to the survey and certification requirements that were in effect before October 1, 1990. Thus the State is failing to survey and certify nursing facilities in accordance with sections 1919(b), (c), and (d) of the Act, and the implementing regulations at 42 CFR, part 483, subpart B. While the State maintains that its existing nursing facility licensing program meets or exceeds the intent of new Federal requirements, the statute provides no authority to allow States to apply their own standards in lieu of Federal certification requirements.

The notice to California announcing a compliance hearing to consider our decision to find the State out of compliance with section 1902(a)(13)(A) of the Act, sections 1919(g)(1), and (g)(2) of the Act, and 42 CFR, parts 442.100, 447.252, 447.253, and 447.255, reads as follows:

Kenneth W. Kizer, M.D., M.P.H.,
Director, Department of Health Services, 714 P Street, room 1253, P.O. Box 942732, Sacramento, California 94234–7320.

Dear Dr. Kizer: This is to advise you that the Health Care Financing Administration has preliminarily determined that California has failed to implement certain nursing home reform provisions contained in the Omnibus Budget Reconciliation Act of 1987 (OBRA 87). Failure to implement these provisions has resulted in the State being cited as out of compliance with section 1902(a)(13)(A) of the Social Security Act (the Act), sections 1919(g)(1) and 1919(g)(2) of the Act, and 42 CFR, parts 442.100, 447.252, 447.253, and 447.255.

Therefore, in accordance with requirements of section 1904 of the Act and the implementing regulations at 42 CFR 430.60 and 430.72, I am scheduling a hearing on this determination to be held on Tuesday, February 12, 1991, in room 406, 50 United Nations Plaza, San Francisco, California 94102. The hearing will begin at 10 a.m. P.S.T.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the Hearings Staff 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 may be reached at (301) 597–3013.

Sincerely,

Gail R. Wilensky, Ph.D.,

Administrator.

(Section 1904 of the Social Security Act) (Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: December 21, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 90–30547 Filed 12–31–90; 8:45 am]

BILLING CODE 4120–03–M

Privacy Act of 1974; New System of Records

AGENCY: Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS).

ACTION: Notice of New System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, "Resident Assessment System and Data Base for Nursing Home Residents," HHS/HCFA/HSQB, No. 09–07–1515. We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires only that the "routine use" portion of the system be published for comment, HCFA invites comments on all portions of this notice. See "Dates" section for comment period.

DATES: HCFA filed a new system report with the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate, and the Acting Administrator, Office of Information and

Regulatory Affairs, Office of Management and Budget (OMB), on December 28, 1990. HCFA has requested a waiver of the 60 day comment period from OMB. If granted, the new system of records will become effective February 1, 1991 unless HCFA receives comments which require alteration to the system.

ADDRESSES: The public should address comments to Richard A. DeMeo, HCFA Privacy Act Officer, Office of Budget and Administration, Room 108, Security Office Park Building, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Rick Fenton, Deputy Director, Division of Long Term Care Services, 2–D–2, ME Building, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone 301–966–6807.

SUPPLEMENTARY INFORMATION: HCFA proposes to initiate a new system of records collecting data under the authority of sections 1819(b)(3), 1819(f)(6)(A), 1919(b)(3) and 1919(f)(6)(A) of the Social Security Act, which will provide for retrieval of individually identifiable resident information necessary to support the evaluation of the resident assessment instrument mandated by sections 4201(c) and 4211(c) of the Omnibus Budget Reconciliation Act of 1987, Public Law 100–203, for residents in nursing facilities approved for participation in the Medicaid and Medicare programs.

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose which is compatible with the purposes for which the information was collected. Any such compatible use of data is known as a "routine use." The proposed routine uses in this system meet the compatibility requirement of the Privacy Act since they are consistent with the purpose of the system to collect and analyze data on the physical, mental, functional, and psychosocial status of residents in long term care facilities certified to participate in the Medicare and/or Medicaid programs. Disclosure of information under these routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: December 21, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

09–70–1515

SYSTEM NAME

Resident Assessment System and Data Base for Nursing Home Residents.

SECURITY CLASSIFICATION

None.

SYSTEM LOCATION

Health Care Financing Administration, 6325 Security Boulevard, Baltimore, Maryland 21207.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM

A maximum of 5,000 persons in approximately 300 Medicare and/or Medicaid participating long term care facilities in 20 States that voluntarily elect to participate in an evaluation of a resident assessment initiative mandated by sections 4201(c) and 4211(c) of Public Law 100–203, the Omnibus Budget Reconciliation Act of 1987.

CATEGORIES OF RECORDS IN THE SYSTEM

The first category is the uniform minimum data set (MDS) designated by the Secretary as mandated under sections 1819(f)(6)(A) and 1919(f)(6)(A) of the Social Security Act.

This MDS includes standard demographic data for identification such as resident name, Social Security Number, gender, race/ethnicity, and birth date. Additional information is collected in the following areas:

Customary Routine
Cognitive Patterns
Communication/Hearing Patterns
Vision Patterns
Physical Functioning and Structural Problems
Continence in Last 14 days
Psychosocial Well-Being
Mood and Behavior Patterns
Activity Pursuit Patterns
Disease Diagnoses
Health Conditions
Oral/Nutritional Status
Oral/Dental Status
Skin Condition
Medication Use
Special Treatment and Procedures

The second category is the resident assessment instrument (RAI), specified by the State as mandated in sections 1819(b)(3) and 1919(b)(3) of the Social Security Act.

The RAI includes the MDS as well as common definitions, utilization guidelines and resident assessment protocols, which direct long term care facility staff toward collecting additional information necessary on specific problem areas.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM

Sections 1819(b)(3), 1819(f)(6)(A), 1919(b)(3) and 1919(f)(6)(A) of the Social Security Act; sections 4201(c) and 4211(c) of Public Law No. 100–203.

PURPOSE OF THE SYSTEM

Retrieval of individually identifiable information is necessary to support the evaluation of the resident assessment instrument as mandated by sections 4201(c) and 4211(c) of Public Law 100–203, and to prepare reports to Congress by January 1, 1992 and January 1, 1993. The use of individual information in the evaluation provides the basis for analyzing State differences in quality of resident assessment and care planning practices and resident outcomes.

The evaluation will inform HCFA and Congress on how States could use resident assessment data to improve the efficiency and/or effectiveness of the resident review component of Federal and State survey and certification practices.

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

Disclosure may be made:

1. To HCFA contractors and subcontractors for the purpose of performing a Congressionally mandated, national evaluation of the reliability, accuracy, efficiency, and effectiveness of nursing facility resident assessment and care planning practices.
2. To the Congressional office of an individual, in response to an inquiry from that congressional office at the request of the individual involved.
3. To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:
   a. HHS, or any component thereof; or
   b. Any HHS employee in his or her official capacity; or
   c. Any HHS employee in his or her individual capacity when the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or
   d. The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective

representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

4. To employees of a State government for the purposes of investigation of potential quality of care problems, fraud, abuse, or waste related to the Medicare and Medicaid programs or for research relating to the Medicare and Medicaid programs and facilities certified by these programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM

1. *Storage:* Paper, magnetic tape and direct access storage device.
2. *Retrievability:* Records may be retrieved by the resident's name, social security number, Health Insurance Claim number, Medicaid Identification Number.
3. *Safeguards:*
   a. Authorized Users: only HHS contract personnel whose duties require that use of the system may access the data. In addition, such HHS contractor personnel are advised that the information is confidential and that criminal sanctions for unauthorized disclosure of private information may be applied.
   b. Physical Safeguards: Research Triangle Institute maintains strict physical security of information maintained on electronic or magnetic media through its system of data security including password security. All paper copies of information are stripped of unique resident identification information once they are edited and kept in a secure location to protect them from unauthorized use.
   c. Procedural Safeguards: Employees who maintain records in the system are instructed to grant regular access only to authorized users. Data stored in computers are accessed through the use of passwords known only to authorized personnel. Contractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act.
   d. Implementation Guidelines: Safeguards are implemented in accordance with all guidelines required by the Department of Health and Human Services. Safeguards for automated records have been established in accordance with the Department of Health and Human Services' Automated Data Processing Manual, Part 6 "ADP System Security". This includes maintaining the records in a secure enclosure.
4. *Retention and Disposal:* Records will be retained until January 1, 1995.
5. *System Manager and Address:* Director, Health Standards and Quality Bureau, Health Care Financing Administration, 2-D-2 Meadows East, 6325 Security Boulevard, Baltimore, Maryland 21207.
6. *Notification Procedures:* To determine if a record exists, write to the System Manager at the address indicated above and specify the State, facility or State identification number of the facility, date of birth and your social security number.
7. *Record Access Procedures:* Same as notification procedures. Requestors must reasonably specify the information being sought. (These procedures are in accordance with Departmental Regulations (45 CFR 5b.5(a)(2).)
8. *Contesting Record Procedures:* Contact the system manager named above, reasonably identify the record (provide State or facility identifier number, date of birth, and social security number), and specify the information to be contested. State the reason for contesting it; e.g., why the information is inaccurate, incomplete or not current. (The procedures are in accordance with Departmental Regulations (45 CFR 5b.7).)
9. *Records Source Categories:* The source categories are the medical records of individual residents residing in nursing facilities participating in the Medicare and Medicaid programs.
10. *System Exempted From Certain Provisions of the Act:* None.

[FR Doc. 90–30572 Filed 12–31–90; 8:45 am]
BILLING CODE 4120–03–M

National Institutes of Health

Meeting of the National Advisory Council for Human Genome Research

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Council for Human Genome Research, National Center for Human Genome Research, January 22, 1991, at the Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland.

This meeting will be open to the public on January 22 from 10 a.m. to 11 a.m. to discuss administrative details or other issues relating to committee activities as indicated in the notice. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 522(b)(4) and 552b(c)(6), title 5, U.S.C. and sec 10(d) of Public law 92–463, the meeting will be closed to the public on January 22 from 11 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Elke Jordan, Deputy Director, National Center for Human Genome Research, National Institutes of Health, Building 38A, room 605, Bethesda, Maryland 20892 (301) 496–0844, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

Dated: December 21, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–30542 Filed 12–31–90; 8:45 am]
BILLING CODE 4140–01–M

National Cancer Institute; Meeting of the Biometry and Epidemiology Contract Review Committee

Pursuant of Public Law 92–463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health, January 24, 1991, Executive Plaza North, Conference Room J, 6130 Executive Boulevard, Rockville, Maryland 20852.

This meeting will be open to the public on January 24 from 9 a.m. to 10 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on January 24 from 10 a.m. to adjournment for the review, discussion, and evaluation of individual contract proposals. The proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would

constitute a clearly unwarranted invasion of personal privacy.

Ms. Carole A. Frank, Committee Management Officer, National Cancer Institute, Building 31, room 10A–06, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892 (301–496–5708), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Harvey P. Stein, Executive Secretary, Biometry and Epidemiology Contract Review Committee, National Cancer Institute, Westwood Building, room 807, National Institutes of Health, Bethesda, Maryland 20892 (301–496–7030) will provide substantive program information upon request.

Dated: December 21, 1990.

Betty J. Beveridge,

Committee Management Office, NIH.

[FR Doc. 90–30538 Filed 12–31–90; 8:45 am]

BILLING CODE 4140–01–M

National Center for Nursing Research; Meeting of the National Advisory Council for Nursing Research

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Council for Nursing Research, National Center for Nursing Research, January 30–31, 1991, Building 31C, Conference Room 10, National Institutes of Health, Bethesda, Maryland 20892.

This meeting will be open to the public on January 30 from 9 a.m. to recess and on January 31 from approximately 11 a.m. to adjournment. Agenda items to be discussed will include the NCNR Director's Report, Biennial Reports of the Council and NIH Director, Reports of the Forum on Integrity in Science, the NIH Ten Point Plan for Managing the Costs of Biomedical Research and the Priority Expert Panels of the National Nursing Research Agenda, a Review of the Initiatives for FY 1991, and the Report of the Advisory Committee to the Director, NIH.

Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S. Code and section 10(d)) of Pub. L. 92–463, the meeting will be closed to the public on January 31 from 8:30 a.m. to approximately 11 a.m. for the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Fran Plyler, Acting Council Assistant, National Advisory Council for Nursing Research, National Institutes of Health, Building 31, room 5B03, Bethesda, Maryland 20892 (301) 496–8230, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

Dated: December 13, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–30543 Filed 12–31–90; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Meeting of the National Advisory Council on Aging

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Council on Aging, National Institute on Aging (NIA), on January 31 and February 1, 1991. On January 31 the Council will meet in Building 31, Conference room 6, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 10:30 a.m. until 2 p.m. for a status report by the Director, National Institute on Aging; a report on the Geriatrics Program; a report on NIA Growth and Future Plans; and for discussions of program policies and issues, recent legislation, and other items of interest.

It will again be open to the public on Friday, February 1, from 8:30 a.m. to adjournment for a report on the NIA Working Group on Program; the NIA Intramural Program; and a report on the Alzheimer Disease Education and Referral Center (ADEAR). Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5 U.S.C. and sec. 10(d) of Public Law 92–463, the meeting of the Council will be closed to the public on January 31 from 2:00 to recess for the review, discussion, and evaluation of individual grant applications.

These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June McCann, Council Secretary for the National Institute on Aging, National Institutes of Health, Building 31, room 5C02, Bethesda, Maryland 20892 (301/496–9322), will provide a summary of the meeting and a roster of committee members upon request.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: December 21, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–30539 Filed 12–31–90; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases and its Subcommittees; Meetings

Notice of meetings of National Advisory Allergy and Infectious Diseases Council, Acquired Immunodeficiency Syndrome Subcommittee, Allergy and Immunology Subcommittee, Microbiology and Infectious Diseases Subcommittee.

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Allergy and Infectious Diseases Council, National Institute of Allergy and Infectious Diseases, and its subcommittees on January 23–25, 1991.

The meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee will be held in the Cabinet Judiciary Room, Hyatt Regency Bethesda Hotel, One Bethesda Metro Center, Bethesda, Maryland 20892. The meeting will be open to the public on January 23 from approximately 8:30 a.m. to recess, and on January 24, from 8:30 a.m. until 12:30 p.m. The meetings of the NAAIDC Allergy and Immunology Subcommittee and NAAIDC Microbiology and Infectious Diseases Subcommittee will be held on January 24, 1991, at the National Institutes of Health, Building 31C, Conference Rooms 7 and 9 respectively, Bethesda, Maryland 20892. Both Subcommittee meetings will be open to the public on January 24 from approximately 10:30 a.m. to recess. On January 25 the meeting of the full Council will be open to the public from 10 a.m. until adjournment in Conference Room 10, for discussion of procedural matters, Council business, and a report from the Instituted Director which will include a discussion of budgetary matters.

The primary program will include a discussion of recommendations related to cost containment at the NIH; report on the children's vaccine initiative; a report of the Council Working Group on

Grant Issues; and a report from each of the Council subcommittees.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee will be closed to the public on January 24, from 1:30 p.m. until recess for review, evaluation, and discussion of individual grant applications. This subcommittee will meet at the National Institutes of Health, Building 31C, Conference Room 10. The meeting of the NAAIDC Allergy and Immunology Subcommittee and the NAAIDC Microbiology and Infectious Diseases Subcommittee will be closed to the public on January 24 from 8:30 a.m. to 10:30 a.m. in conference rooms 7 and 9 respectively, for review, evaluation, and discussion of individual grant applications. The meeting of the full Council will be closed from approximately 8:30 a.m. to 10 a.m. on January 25 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Luz A. Froehlich, Acting Director, Extramural Activities Program, NIAID, NIH, Westwood Building, room 703, telephone (301–496–7291), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855 Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health).

Dated: December 13, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–30537 Filed 12–31–90; 8:45 am]

BILLING CODE 4140–01–M

Meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council to provide advice to the National Institute of Arthritis and Musculoskeletal and Skin Diseases on February 7 and 8, 1991, Conference Room 6, Building 31, National Institutes of Health, Bethesda, Maryland.

The meeting will be open to the public February 7 from 8:30 a.m. to 12 noon to discuss administrative details relating to Council business and special reports. Attendance by the public will be limited to space available.

The meeting of the Advisory Council will be closed to the public on February 7 from 1 p.m. to recess and again on February 8 from 8:30 a.m. to adjournment at approximately 12 noon in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Further information concerning the Council meeting may be obtained from Dr. Michael Lockshin, Executive Secretary, National Arthritis and Musculoskeletal and Skin Diseases Advisory Council, NIAMS, Building 31, Room 4C32, Bethesda, Maryland 20892, (301) 496–0802.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIAMS, Building 31, Rm. 4C32, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–0803.

(Catalog of Federal Domestic Assistance Program No. 13.846, Arthritis, Bone and Skin Diseases, National Institutes of Health)

Dated: December 21, 1990.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 90–30540 Filed 12–31–90; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Meeting of the National Advisory Dental Research Council

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Advisory Dental Research Council, National Institute of Dental Research, to be held January 22–23, 1991, Conference Room 10, Building 31C, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 9:30 a.m. to recess on January 22 for general discussion and program presentations. A meeting of the National Advisory Dental Research Council Subcommittee on Minority Activities will be held on January 23 from 12:30 p.m. until adjournment at the same location. Attendance by the public at both meetings will be limited to space available.

In accordance with the provisions set forth in secs. 552(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting of the Council will be closed to the public on January 22 from 8:30 a.m. to 9:30 a.m. and on January 23 from 9 a.m. to approximately 12 noon for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Brent Jaquet, Executive Secretry, National Advisory Dental Research Council, and Special Assistant to the Director, National Institute of Dental Research, National Institutes of Health, Building 31, room 2C39, Bethesda, Maryland 20892 (telephone 301–496–9469) will furnish a roster of committee members, a summary of the meeting, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 13.121—Diseases of the Teeth and Support Tissues; Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13.122—Disorders of Structure, Function, and Behavior: Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13.845—Dental Research Institute; National Institutes of Health)

Dated: December 13, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–30541 Filed 12–31–90; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Health Resources and Services Administration; Omnibus Budget Reconciliation Act of 1989; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority to the Administrator, Health Resources and Services Administration, on December 6, 1990, by the Assistant Secretary for Health, the Administrator has delegated to the Director, Maternal and Child Health Bureau, certain authorities under the Omnibus Budget

Reconciliation Act of 1989, as amended hereafter, as follows:

Section 6506(a)—Development of Model Application for Maternal and Child Assistance Programs (42 U.S.C. 701 note).

Section 6508—Health Insurance for Medically Uninsurable Children (42 U.S.C. 701 note).

Section 6509—Maternal and Child Health Handbook (42 U.S.C. 701 note).

These authorities are to be exercised only after consultation and in cooperation with the Health Care Financing Administration.

This delegation excluded the authority to promulgate regulations and to submit reports to the Congress.

Redelegation

This authority may be redelegated.

Prior Delegations

None.

Effective Date

This delegation was effective on December 21, 1990. In addition, I hereby affirm and ratify any actions taken by the Administrator or his subordinates which, in effect, involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

Dated: December 21, 1990.

Robert G. Harmon,

Administrator.

[FR Doc. 90-30569 Filed 12-31-90; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO-250-4370-02-241B]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau of Land Management's (BLM) Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the BLM's Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004-0042), Washington, DC 20503, telephone 202-395-7340.

Title: Protection, Management, and Control of Wild Free-Roaming Horses and Burros, 43 CFR 4700.

OMB Approval Number: 1004-0042.

Abstract: Respondents furnish documentation about the following:

1. Removal of wild horses and burros from private land (non-form item).
2. Qualifications of applicants related to adoption of 1 to 4 wild horses or burros (Form 4710-10).
3. Qualifications of applicants related to adoption of 5 or more wild horses or burros (non-form item).

The request for removal of animals from private land is necessary to determine the need for removing wild horses and burros from these lands. The documentation about adoption allows the BLM to determine if an applicant will be given the opportunity to adopt wild horses or burros. Adoption applicants provide information about their qualifications and capability to provide humane care and treatment for wild horses and burros under conditions specified by Federal regulations. Applicants for adoption of more than 4 wild horses or burros are requested to provide additional information related to their capability to provide proper care for the number of wild horses or burros requested.

Bureau Form Numbers: Application for Adoption of Wild Horse(s) and Burro(s), Form 4710-10.

Frequency: On occasion.

Description of Respondents: Landowners requesting the BLM to remove wild horses or burros from their property and applicants desiring to adopt wild horses or burros.

Estimated Completion Time: .165 hours per response.

Annual Response: 20,450.

Annual Burden Hours: 3,379.

Bureau Clearance Officer: (Alternate) Gerri Jenkins 202-653-8853.

Dated: November 29, 1990.

Vincent J. Hecker,

Acting Assistant Director for Land and Renewable Resources.

[FR Doc. 90-30574 Filed 12-31-90; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Meeting, Klamath Fishery Management Council

AGENCY: Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss et seq.). The meeting is open to the public.

DATES: The Klamath Fishery Management Council will meet from 10:30 a.m. to 5:00 p.m. on Thursday, January 10, 1991; and from 8:00 a.m. to 3:00 p.m. on Friday, January 11, 1991.

Place: The meeting will be held in the conference room of the North Coast Inn, 4975 Valley West Blvd., Arcata, California.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1030 South Main), Yreka, California 96097-1006, telephone (916) 842-5763.

SUPPLEMENTARY INFORMATION: For background information on the Management Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

The Council will review, for approval and distribution, a public review draft of a long-range plan for management of harvest of anadromous fish stocks, and will discuss options for a public review process. The Council will also hear reports on 1990 harvests and spawning escapements of Klamath fall chinook salmon and will review harvest management plans for the 1991 fishing season.

Dated: December 18, 1990.

William E. Martin,

Acting Regional Director.

[FR Doc. 90-30573 Filed 12-31-90; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 22, 1990. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC

20013-7127. Written comments should be submitted by January 17, 1991.

Beth Savage,

Acting Chief of Registration, National Register.

ALABAMA

Jefferson County

Woodlawn Commercial Historic District, Area around jct. of 1st Ave. N. and 55th Pl., Birmingham, 90002179

Mobile County

Lindsely, Martin, House, 3112 Bayfront Rd., Mobile, 90002176

Oakleigh Garden Historic District (Boundary Increase), Roughly bounded by Selma St., Broad St., Texas St. and Rapier Ave., Mobile, 90002175

Montgomery County

Old Ship African Methodist Episcopal Zion Church, 483 Holcombe St., 90002177

CALIFORNIA

Mendocino County

Point Arena Light Station (Point Arena MPS), Lighthouse Rd., Point Arena vicinity, 90002189

Sonoma County

Shaw, Isaac E., Building, 219 N. Cloverdale Blvd., Cloverdale, 90002155

MISSOURI

Platte County

Waddell "A" Truss Bridge, English Landing Park, over Rush Cr., Parkville, 90002173

NEW JERSEY

Cumberland County

Miah Maull Shoal Lighthouse, In Delaware Bay 5 mi. SW of Egg Island Point, Delaware Bay, 90002188

NORTH CAROLINA

Johnston County

Hannah's Creek Primitive Baptist Church, NC 301 SW of jct. with NC 1171, Benson vicinity, 90002181

Mecklenburg County

Craven, Dr. Walter Pharr, House (Rural Mecklenburg County MPS), 7648 Mt. Holly—Huntersville Rd., Charlotte vicinity, 90002187

Croft Historic District (Rural Mecklenburg County MPS), Along NC 115 N from jct. with Bob Beatty Rd., Charlotte vicinity 90002185

Hayes—Bryum Store and House (Rural Mecklenburg County MPS), MC 160 S of jct. with Shopton Rd., Charlotte vicinity, 90002186

OKLAHOMA

Payne County

Pleasant Valley School, 1901 S. Sangre Rd., Stillwater, 90002182

TEXAS

Nacogdoches County

Blount, Stephen William and Mary Price, House, 310 N. Mound St., Nacogdoches, 90002180

VIRGINIA

Albemarle County

Blue Ridge Farm, Jct. of VA 691 and VA 692, Greenwood vicinity, 90002163

Piedmont, Jct. of I–64 and VA 691, Greenwood vicinity, 90002184

Bland County

Mountain Glen, 1 mi. SE of Ceres, Virginia Ceres vicinity, 90002161

King George County

Eagle's Nest, VA 642 E of jct. of VA 218 and VA 682, Ambar vicinity, 90002160

Office Hall, Jct. of VA 3 and US 301, King George Court House vicinity, 90002164

Loudoun County

Fleetwood Farm, VA 621 of jct. with VA 617, Arcola vicinity, 90002172

Montgomery County

Blacksburg Historic District (Montgomery County MPS), Roughly, area N of jct. of Main and Jackson Sts. including sections out along Lee Progress Sts., Blackburg, 90002165

Bowyer—Trollinger Farm (Montgomery County MPS), VA 600 N of jct. with VA 693, Childress vicinity, 90002167

Christiansburg Post Office (Montgomery County MPS), NW corner of public square, Christiansburg, 90002168

McDonald Joseph, Farm (Montgomery County MPS), VA 657 NW of jct. with VA 685, at end of Spur Rd., Price Fork vicinity, 90002166

North Fork Valley Rural Historic District (Montgomery County MPS), Along the North Fork of the Roanoke R. from the Roanoke Co. line S to Lusters Gate, Blacksburg vicinity, 90002169

Nottoway County

Blackstone Historic District, Roughly bounded by Mann, Dillard, Tavern, S. High, Oak, Eighth and Freeman Sts. and the Norfolk and Western RR tracks, Blackstone, 90002174

Richmond Independent City

Taylor Farm, 4012 Walmsley Blvd., Richmond, 90002158

Roanoke Independent City

Campbell Avenue Complex, 118—128 Campbell Ave., SW., Roanoke, 90002171

Roanoke City Firehouse No. 6, 1015 Jamison Ave., SE., Roanoke, 90002162

Suffolk Independent City

Phoenix Banks of Mansemond, 339 E. Washington St., Suffolk, 90002159

Waynesboro Independent City

Plumb House, 1012 W. Main St., Waynesboro, 90002178

WASHINGTON

King County

Wurdemann, Harry Vanderbilt, House, 17602 Bothell Way NE., Lake Forest Park, 90002154

WISCONSIN

Iowa County

DNR 4# Rockshelter (Wisconsin Indian Rock Art Sites MPS), Address Restricted, Brigham, 90002156

Hole-in-the-Wall #1 Cave (Wisconsin Indian Rock Art Sites MPS), Address Restricted, Brigham, 90002157

[FR Doc. 90–30617 Filed 12–31–90;8:45am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31805]

Canadian Pacific Limited and D&H Corp.–Trackage Rights Exemption—Consolidated Rail Corporation; Notice of Exemption

Consolidated Rail Corporation (Conrail) has agreed to grant overhead trackage rights to Canadian Pacific Limited (CP) and D&H Corporation (DHC) over the following lines of railroad between Buffalo and Suspension Bridge (Niagara Falls) NY:

1. Over the Lockport Branch LC 4821, from MP 75.8+— Suspension Bridge to MP 70.4+— (CP–81);
2. Over the Niagara Branch LC 4843, from MP 19.7+— (CP–81) to MP 5.6+— (CP–55);
3. Over the Belt Line Branch LC 4842, from MP 7.2+— (CP–55) to MP 0.0+— (CP–437);
4. Over the Chicago Line LC 6467, from MP 0.0+— (CP–437) to MP 0.2+—;
5. Over the Howard Street Running Track LC 4852, from MP 422.3+— to MP 421.8+—; and
6. Over the Bison Running Track LC 6401, from MP 421.8+— to MP 420.2+—.

Under the terms of the agreements, the trackage rights may be exercised by DHC or any other affiliate of CP. The trackage rights were to become effective on or after December 26, 1990. These trackage rights will bridge the gap between the CP and the Delaware and Hudson Railway Company (DH) rail systems and permit CP and DHC to consummate the acquisition of DH's railroad assets, approved in *Canadian Pacific LTD.-Pur. & Trackage-D&H Ry. Co.,* 7 I.C.C. 2d 95 (1990).

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may

be filed at any time. The filing of a petition to revoke will not stay the transaction. Pledgings must be filed with the Commission and served on: Katharine F. Braid, Canadian Pacific Limited, 40 University Avenue, Suite 918, Toronto, Ontario M5J 1T1, and Terence M. Hynes, Sidley & Austin, 1722 Eye Street, NW., Washington, DC 20006.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), and as clarified in *Wilmington Term. R.R., Inc.—Pur. & Lease-CSX Transp. Inc.*, 6 I.C.C.2d 799 (1990).

Dated: December 26, 1990.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary

[FR Doc. 90-30597 Filed 12-31-90; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-327X]

St. Joseph Terminal Railroad Co.—Abandonment Exemption—in St. Joseph, MO

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by St. Joseph Terminal Railroad Company of 1.047 miles of rail line in Buchanan County, MO, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 1, 1991. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by January 14, 1991, petitions to stay must be filed by January 14, 1991, and petitions for reconsideration must be filed by January 22, 1991.

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987).

ADDRESSES: Send pleadings referring to Docket No. AB-327X to:

(1) Office of the Secretary Case Control Branch Interstate Commerce Commission Washington, DC 20423.

and

(2) Petitioner's representatives:
Richard Weicher The Atchison, Topeka and Santa Fe Ry. Co. 80 East Jackson Boulevard Chicago, IL 60604
Joseph D. Anthofer Union Pacific Railroad Company 1416 Dodge Street Omaha, NE 68179

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245 [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is availaable through TDD services (202) 275-1721.]

Decided: December 21, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Emmett, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-30598 Filed 12-31-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

BACKGROUND: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

LIST OF RECORDKEEPING/REPORTING REQUIREMENTS UNDER REVIEW: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable. How often the recordkeeping/reporting requirement is needed. Who will be required to or asked to report or keep records. Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

COMMENTS AND QUESTIONS: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503, (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

BUREAU OF LABOR STATISTICS, 1990 PILOT SURVEYS

Form #	Affected public	Respondents	Frequency	Average time per response
OSHA 200	Selected private employers	2530	Quarter	3 minutes.
OSHA 101	Selected private employers	1120	Quarter	12 minutes.
BLS-OSH90L	Selected private employers	1120	Quarter	7 minutes.
BLS-OSH90S	Selected private employers	3360	Quarter	20 minutes.
BLS-OSH915	Selected private employers	1400	Annual	64 minutes.
OSHA 10191	Selected private employers	910	Quarter	20 minutes.
4274 total hours				

This study will obtain and evaluate the operational, quality, and cost characteristics of a method for reporting and coding occupational injury and illness individual case information.

CURRENT EMPLOYMENT STATISTICS

[1220–0011; BLS–790]

Form #	Affected public	Respondents	Frequency	Per response
790/BM	Businesses or other for-profit; Small businesses	400	Monthly	15 min.
790/JF & J-FD		6,500	Monthly	5 min.
790 CU	Businesses or other for-profit; Small businesses	45,000	Annual	2 min.
790—all other	Businesses or other for-profit; Small businesses or organizations.	336,100	Monthly	7 min.
479,740 total hours				

The Current Employment Statistics survey is a federal/state survey of Employment, hours and earnings in non-farm establishments. The survey produces monthly estimates for the nation, states and selected metropolitan areas.

Extension

Employment and Training Administration
Service Delivery Area Appeal
1205–0202
On occasion
State or local governments
20 respondents; 40 total hours; 2 hours per response; no forms

The information collected will be used to determine whether JTPA recipients denial of designation of entities as service delivery area is in conformance with JTPA.

Title 29 CFR Part 29—Labor Standards for the Registration of Apprenticeship Programs
1205–0223; ETA 671
On Occasion
Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations
188,040 respondents; 39,503 total hours; 13 minutes per response; 1 form

Needed by employers, apprentices, and State apprenticeship agencies to set forth the labor standards to safeguard the welfare of apprentices and to extend the application of such standards by subscribing policies and procedures concerning the registration for certain Federal purposes of acceptable apprenticeship programs.

Mine Safety and Health Administration
Form 7000–2, Quarterly Mine Employment and Coal Production Report
1219–0006
Quarterly
Businesses and other for profit; small businesses or organizations
84,560 responses, 0.25 hour per response, 21,140 burden hours

Requires mine operators to report to MSHA quarterly employment levels and coal production. The employment and production data when correlated with the accident data provides information for making decisions on improving safety and health enforcement programs, improving education and training efforts, and establishing priorities in technical assistance activities in safety and health.

Occupational Safety and Health Administration Designation of competent Person—OSHA 73
1218–0011
Reporting/Recordkeeping
Number of respondents 300; Number of responses per respondent 1;
Hours per response 5 min; Total burden hours 25.

This form is needed to help ensure that shipyard personnel do not enter confined spaces that contain oxygen deficient, toxic, or flammable atmospheres. Qualified personnel must test these spaces and this form serves as the employers designation of selected employees who through training, skill and ability, are deemed competent to conduct such tests. Shipyards, barge cleaners, and repair facilities are affected.

Signed at Washington, DC this 27th day of December, 1990.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 90–30616 Filed 12–31–90; 8:45 am]

BILLING CODE 4510–24–M

Mine Safety and Health Administration

[Docket No. M–90–201–C]

Cyprus Empire Corp.; Petition for Modification of Application of Mandatory Safety Standard

Cyprus Empire Corporation, 9100 East Mineral Circle, Englewood, Colorado 80155 has filed a petition to modify the application of 30 CFR 75.500 (permissible electric equipment) to its Eagle No. 6 Mine (I.D. No. 05–01370) located in Moffat County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cables between machine components be isolated from hydraulic lines.

2. Presently petitioner encloses electrical cables within a flame resistant hose conduit, which causes the hoses to become entangled and detracts from good housekeeping practices on the longwall mining equipment, particularly the shields.

3. Separating the hoses and cables causes an impractical walkway behind the shield legs, which affects the maintenance of adequate walkways.

4. As an alternate method, petitioner proposes to use permissible fire-resistant hydraulic fluid in the hydraulic hoses instead of non-fire resistant hydraulic fluid.

5. Petitioner states that the alternate method will achieve the results of the standard and will at all time guarantee no less than the same measure of protection as the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 1, 1991. Copies of the petition are available for inspection at that address.

Dated: December 24, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90–30614 Filed 12–31–90; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–90–194–C]

Keystone Coal Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Keystone Coal Mining Company, P.O. Box 729, Indiana, Pennsylvania 15701 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Margaret No. 11, #2 Portal Mine (I.D. No. 36–08139) located in Armstrong County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return aircourses be separated from belt haulage entries and that belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to install a fire detection (CO monitoring) system and use belt air to ventilate in the working sections.

3. Petitioner proposes to install a low-level carbon monoxide detection system in all belt entries utilized as intake aircourses to monitor air at each belt drive and tailpiece and at intervals not to exceed 1,000 feet along each conveyor belt entry. The low-level carbon monitoring system would be capable of giving warning of a fire for a minimum of four hours after the source of power to the belt is removed, except when power is removed during a fan stoppage or the belt haulage is examined.

4. The low-level carbon monoxide monitoring devices would be capable of providing both visual and audible alarm signals to a working section and to an attended surface location where a responsible person is on duty at all times to see or hear the alert and alarm signals. A visual alert signal would be activated when the carbon monoxide level at any sensor is 10 parts per million (ppm) above the ambient level for the mine and an audible signal when the carbon monoxide level is 15 ppm above the ambient level for the mine. When the carbon monoxide system gives a visual signal at 10 ppm above the established ambient level, all persons would be withdrawn to a safe area out by the working places and appropriate action would be taken to determine the cause of the actuation. The mine-specific fire fighting and evacuation plan would be implemented when the carbon monoxide system gives an audible signal at 15 ppm above the established ambient level.

5. The carbon monoxide system would be capable of identifying any activated sensor, monitoring electrical continuity, and detecting electrical malfunctions.

6. The carbon monoxide system would initiate the fire alarm signals at a surface location where a responsible person is always on duty when miners are underground. The person would be located so that the signals could be seen and heard at all times and would have two-way communications with all working sections.

7. The carbon monoxide monitoring system would be examined visually at least once each coal-producing shift and tested for functional operation at least once every 7 days to ensure that the monitoring system is working and maintained properly. The monitoring system would be calibrated with known concentrations of carbon monoxide and air mixtures at least every 30 calendar days.

8. A record of all inspections would be maintained on the surface. If at any time the carbon monoxide monitoring system is deenergized for reasons such as routine maintenance or failure of a senor unit, the belt conveyor may continue to operate provided the affected portion of the belt conveyor entry is continuously patrolled and monitored for carbon monoxide by a qualified person using a hand-held carbon monoxide detection device.

9. For these reasons, petitioner requests a modification of the standard

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office or before February 1, 1991. Copies of the petition are available for inspection at that address.

Dated: December 24, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90–30614 Filed 12–31–90; 8:45 am]

BILLING CODE 4510–43–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445 and 50–446]

Texas Utilities Electric Co. Comanche Peak Steam Electric Station; Receipt of Petition for Director's Decision

Notice is hereby given that by Petition of November 18, 1990, the Citizens for Fair Utility Regulation requests the Executive Director for Operations to institute a proceeding and require the Texas Utilities Electric Company to show cause why its license to operate the Comanche Peak Steam Electric Station should not be revoked. The Petition asserts the following grounds for this request:

1. The continued failure of Borg-Warner check valves at Comanche Peak Steam Electric Station;

2. The failure of the Texas Utilities Electric Company to take adequate corrective actions to resolve these check valve failures; and

3. The questionable safety of certain Borg-Warner check valves installed at Comanche Peak.

The request is being treated pursuant to § 2.206 of title 10 of the Code of Federal Regulations (10 CFR) of the Commission's regulations. As provided by 10 CFR 2.206, appropriate action will

be taken on this request within a reasonable time.

A copy of the Petition is available for inspection in the U.S. Nuclear Regulatory Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019.

Dated at Rockville, Maryland, this 24th day of December 1990.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 90-30593 Filed 12-31-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-11681, License No. 35-16717-01, EA 90-106]

Newman Memorial Hospital, Shattuck, Oklahoma; Order Imposing Civil Monetary Penalty

I

Newman Memorial Hospital (NMH) (Licensee) is the holder of NRC Material's License No. 35-16717-01 issued by the Nuclear Regulatory Commission (NRC or Commission) on May 23, 1989. The license authorizes the Licensee to use NRC-licensed radioactive materials in accordance with the conditions specified therein to conduct nuclear medicine activities.

II

Inspections of the Licensee's activities were conducted on January 25-26, and May 10, 1990. The results of these inspections indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated July 25, 1990. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice by two letters dated August 21, 1990. The Licensee admitted nine violations (Violations A, C.1, E.1, E.2, F, G, H, I and J), denied three violations in their entirety (Violations B, C.2, and D), and admitted in part and denied in part the remaining violation (Violation C.3). In addition, the Licensee stated in regard to a number of the admitted violations that they had been identified by the Licensee's consulting physicist and were in the progress of being corrected or had been corrected prior to NRC's inspections, provided extenuating information in relation to several violations and requested mitigation of the civil penalty.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice should be imposed by Order.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:*

The Licensee pay a civil penalty in the amount of $5,000 within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in Violations B, C.2, C.3 and D of the Notice referenced in section II above, and

(b) Whether, on the basis of such violations and the additional violations set forth in the Notice that the Licensee admitted, this Order should be sustained.

Dated at Rockville, Maryland this 20th day of December 1990.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

APPENDIX—Evaluations and Conclusions; Appendix to Order Imposing Civil Monetary Penalty

On July 25, 1990, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during January 25 26, 1990 and May 10, 1990, NRC inspections. Newman Memorial Hospital (NMH) responded to the Notice in two letters dated August 21, 1990. The NRC's evaluations and conclusions regarding the licensee's response follow:

Restatement of Violations

A. 10 CFR 35.21 requires that the Radiation Safety Officer ensure that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's byproduct material program. In addition, specific duties are prescribed in paragraph (b) of that section.

Contrary to the above, as of May 10, 1990, the RSO was not ensuring that the radiation safety activities were being performed in accordance with approved procedures and regulatory requirements, as evidenced by the violations cited in this Notice and the RSO's admission that, as of the May 10, 1990 inspection, he had not reviewed the regulations for which he was responsible and that he had not reviewed records that he had signed.

B. 10 CFR 35.22(a)(3) requires that to establish a quorum and to conduct business, at least one-half of the Radiation Safety Committee's members must be present, including the Radiation Safety Officer (RSO) and the management's representative.

Contrary to the above, the RSO was not present during RSC meetings held to conduct business during August and November 1988 and February 1990.

C. License Condition 15 specifies, in part, that the license is based on the licensee's statements and representations in the application dated January 29, 1987.

1. Item 9.4 of the application describes the licensee personnel external exposure monitoring program. Item 9.4.2 specifies, in part, that all individuals who are occupational exposed to

radiation on a regular basis will be issued film or TLD (thermoluminescent) whole body monitoring devices. Item 9.4.3 specifies, in part, that all individuals who handle radioactive material on a regular basis will be issued film or TLD (thermoluminescent) finger monitoring devices.

Contrary to the above, from October through December 1989, the licensee failed to issue whole body or finger monitoring devices to two individuals who were occupationally exposed to radiation and handled radioactive material on a regular basis during this period.

2. Item 10.4 of the application describes the licensee rules for safe use of radiopharmaceuticals. Item 10.4.7 specifies, in part, that personnel are to wear monitoring devices at all times while in areas where radioactive materials are used or stored.

Contrary to the above, on May 10, 1990, an inspector observed an individual working in an area where radioactive materials were in use and stored and who was not wearing a personnel monitoring device.

3. Item 10.12 of the application specifies that the procedures described in Appendix N of Regulatory Guide 10.8, Revision 2, will be used to conduct area radiation surveys.

Appendix N, in part, requires that weekly surveys be performed to determine removable contamination levels in radiopharmaceutical elution, preparation, and administration areas. This method must be sufficiently sensitive to detect 2000 disintegrations per minute (dpm) per 100 square centimeters. Also, the records of the survey must contain a drawing of the areas surveyed, contamination action levels as established by the RSO, and measured contamination levels in dpm/100 square centimeters.

Contrary to the above: (1) from September 1989 through January 1990, the licensee had failed to conduct weekly surveys to determine removable contamination in radiopharmaceutical elution, preparation, and administration areas; (2) from 1987 through January 1990, the licensee failed to ensure that the method used to conduct contamination surveys was sufficiently sensitive to detect 2000 dpm/100 square centimeters; (3) from January 1988 through January 1990, records of contamination surveys did not include a drawing of the areas surveyed, and (4) from 1987 through May 10, 1990, did not include the measured contamination levels in dpm/100 square centimeters.

D. 10 CFR 35.60(c) requires, in part, that a licensee require each individual who prepares a radiopharmaceutical kit to use a syringe radiation shield when preparing the kit.

Contrary to the above, as of may 10, 1990, the licensee's technologist who prepared radiopharmaceutical kits failed to always use a syringe radiation shield when preparing the kits during 1988 and 1989.

E. 1. 10 CFR 35.50(b)(1) requires, in part, that a licensee check each does calibrator for constancy with a dedicated check source at the beginning of each day of use.

Contrary to the above, on August 20, 25, and 31; and November 2, 3, 9, 11, 26, and 28, 1989, the licensee did not check a dose calibrator for constancy with a dedicated check source and used the dose calibrator to measure patient doses on those days.

2. 10 CFR 35.50(b)(3) requires, in part, that a licensee test each dose calibrator for linearity at least quarterly.

Contrary to the above, the licensee did not complete a linearity test of the dose calibrator between November 1989 and May 10, 1990.

F. 10 CFR 35.53(c) requires, in part, that a licensee retain a record of the measurements of radiopharmaceutical doses required by Section 35.53 for 3 years. To satisfy this requirement, the record must contain the: (1) patient's name, and identification number if one has been assigned; (2) date and time of the measurement; and (3) initials of the individual who made the record.

Contrary to the above, from 1988 through May 10, 1990, certain records of radiopharmaceutical dose measurements did not contain the patient name and identification number, the date and time of the measurement, and the initials of the individual who made the record.

G. 10 CFR 35.60(b) requires a licensee to conspicuously label each syringe, or syringe radiation shield that contains a syringe with a radiopharmaceutical. The label must show the radiopharmaceutical name or its abbreviation, the clinical procedure to be performed, or the patient's name.

Contrary to the above, during 1988 and 1989 the licensee failed to label syringes or syringe radiation shields that contained syringes with radiopharmaceuticals.

H. 10 CFR 35.14 requires, in part, that a licensee notify the Commission by letter within 30 days when an authorized user permanently discontinues performance of duties under the license.

Contrary to the above, as of May 10, 1990, the licensee had failed to provide the required notification for two authorized users who had permanently discontinued their performance of duties under this license in December 1989.

I. 10 CFR 20.401(a) requires, in part, that each licensee maintain records showing the radiation exposures of all individuals for whom personnel monitoring is required under 10 CFR 20.202.

Contrary to the above, as of May 10, 1990, the licensee had failed to maintain records for three individuals of radiation exposures accrued during the period October through December 1989.

J. 10 CFR 35.50(e) requires, in part, that a licensee retain a record of each check and test required by Section 35.50(b)(2), (3), and (4), and that the record include the signature of the Radiation Safety Officer (RSO).

Contrary to the above, from 1987 through January 1990, records of the checks and tests required under 10 CFR 35.50(b)(2), (3), and (4) did not include the signature of the RSO in every case.

These violations have been collectively classified as a Severity Level III problem (Supplements IV and VI).

Cumulative Civil Penalty—$5,000 (assessed equally among the 10 violations)

Summary of Licensee's Response to Notice of Violation

(Note: Although the proposed civil penalty was assessed equally among 10 violations, A through J, Violations C and E had more than one part, such that if counted individually, the Notice could be viewed as containing 13 violations of NRC regulations and license conditions. For the purpose of summarizing and evaluating the Licensee's response, a total of 13 violations is used.)

The Licensee admitted 9 of the 13 violations (Violations A, C.1, E.1, E.2, F, G, H, I and J), denied 3 violations in their entirety (Violations B, C.2, and D), and admitted in part and denied in part the remaining violation (Violation C.3). In addition, the Licensee stated in regard to a number of the admitted violations that they had been identified by the Licensee's consulting physicist and were in the progress of being corrected or had been corrected prior to NRC's inspections, and provided extenuating information in relation to several violations.

For the purpose of this and the next section of this document, which are focused on determining whether the violations in the Notice did or did not occur, only those violations which the Licensee denied either in whole or in part are discussed. The Licensee's statements in regard to identification, corrective action, and extenuating circumstances are more appropriately addressed in the subsequent sections of

this document in which the Licensee's arguments for mitigation of the proposed civil penalty are summarized and evaluated.

In denying Violations B, C.2 and D, and denying in part Violation C.3, the Licensee stated in general that it felt the conclusions reached by NRC's inspectors were incorrect and made the following arguments:

1. In response to Violation B, the Licensee stated that interim meetings of a portion of the radiation safety committee (RSC) had been held in August and November 1988. These meetings included the administrative representative, nuclear medicine technologist, and the Licensee's consulting physicist, but not the RSO. The licensee stated that the RSO was on vacation and was not present during the February 1990 RSC meeting of the RSC, but that a meeting was held later with the RSO to discuss all matters, including the NRC inspection results.

2. In response to Violation C.2, the Licensee stated that the inspector arrived before the technologist, and that immediately upon the arrival of the technologist and before he could go to his office to get his film badge, the inspector requested entry to the hot lab area. The Licensee stated that the technologist complied with the inspector's request, letting the inspector into the Hot Lab where radioactive materials are kept, at which point the inspector informed the technologist that he was not wearing his badge. The Licensee stated that the technologist should have retrieved and worn his film badge, but that the approach on the part of the inspector was inappropriate and contributed to the error.

3. In response to Violation D, the Licensee stated that the inspectors could not have observed a failure of a technologist to use syringe shields to prepare kits because no patients "were done" during either the January or May 1990 inspections. The Licensee added that it had identified a need for "better" syringe shields in April 1989 and that the shields were in use by August 1989

4. In response to Violation C.3 (part 3), the Licensee stated that it did have a pictorial diagram of the department and that it was available at the time of the inspection, and attached a copy of a daily survey record with the response. (This record documented ambient radiation surveys conducted during the period January 4–25, 1982).

NRC Evaluation of Licensee's Response to Notice of Violation

1. In regard to Violation B, the Licensee has indicated that meetings of the RSC may have been held without the RSO present, but that the matters discussed during the RSC meetings were discussed with the RSO when he became available. The Licensee has not, however, provided any information to suggest that the RSC was reconvened to discuss these matters with the RSO nor has the Licensee suggested that records of any such meetings of the RSC exist. Although the staff acknowledges the benefit of interim meetings of the RSC, whether or not a quorum is present, the requirement to gather specific responsible individuals quarterly, for the purpose of reviewing licensed activities, must be met. Additionally, minutes documenting the subjects discussed during these meetings must be maintained. The NRC staff concludes that the Licensee's explanation does not satisfy the requirements of 10 CFR 35.22(a)(3).

NRC concludes that the violation occurred as stated.

2. In regard to Violation C.2, the Licensee stated that the NRC inspectors reached an incorrect conclusion. The Licensee in its response admitted that the technologist did not wear a personal monitoring device while in a controlled area. The Licensee, in effect, requested that the violation be withdrawn based on the circumstances it described in its response. However, the staff does not fully agree with the Licensee's representation of the circumstances.

During the May 1990, inspection, the inspector initially met with the hospital administrator who accompanied them to the nuclear medicine department. Prior to entering the Licensee's restricted area, the administrator introduced the inspectors to the RSO and several other individual, including the subject technologist. The inspectors indicated that they wished to tour the nuclear medicine lab and waited with the Licensee's consulting physicist and the administrator while the technologist retrieved keys to the lab. Further, the inspectors indicated that the technologist should feel free to tend to any immediate patient concerns or other matters since the hospital staff was just beginning its workday.

During the enforcement conference conducted on June 1, 1990, the Licensee's representatives stated that they felt that the technologist has simply made an error. The Licensee representatives further stated that they believed the inspector's actions in this instance to have been inappropriate.

In NRC's view, the technologist was provided an opportunity to retrieve any required monitoring devices prior to accompanying the inspectors. The NRC does not agree with inferences in the licensee's position that NRC actions reasonably contributed to the violations. The inspector did not notice that the individual was without the required film badge until after the inspectors had been taken into the hot lab. Once the inspectors noticed this error, it was promptly brought to the attention of the technologist and prior to requesting him to handle licensed material.

NRC is not in a position to know whether Licensee personnel have routinely met this requirement. In this instance, the violation is based on the observation of an inspector during an inspection. The NRC staff notes, however, that good radiation safety practices should be observed regardless of the presence of an NRC inspector and, in fact, that most individuals are more conscientious of items such as personal monitoring devices when in the presence of an inspector.

NRC concludes that the circumstances surrounding this violation do not provide a basis for withdrawing the violation and that the violation occurred as stated.

3. In regard to Violation D, the violation was based not on inspector observations, as the Licensee's response suggests, but on interviews with Licensee personnel. The violation cited events in 1988 and 1989. NRC staff acknowledges that syringe shields were available for use at the time of NRC's May 1990 inspection. However, the syringe shields that were available were not sized to accommodate all syringes used by the Licensee in preparing radiopharmaceuticals from reagent kits. This was discussed in detail during the inspection with Licensee personnel (technical staff) who indicated that when preparing radiopharmaceuticals requiring larger dilution volumes, necessitating the use of larger syringes, the kits had been prepared without the use of a syringe shield. The significance of the failure to use a syringe shield in these instances was compounded by the fact that the licensee had not implemented the use of a table-top "L-block" to provide additional shielding for its technical staff when reconstituting radiopharmaceuticals or drawing patient doses.

NRC concludes that the violation occurred as stated.

4. In regard to Violation C.3 (part 3), the NRC staff has reviewed the 1982 survey records provided with the licensee's response. While these records indicate that a pictoral diagram of the department was available at one time, and may indeed have been available at the time of the NRC's inspection, this has little to do with the actual violation. The violation involved a failure to have

included a drawing of the area surveyed for contamination surveys performed from January 1988 through January 1990. The Licensee has provided no information to suggest that such records included drawings.

NRC concludes that the violation occurred as stated.

Summary of Licensee's Request for Mitigation

The Licensee made the following points in requesting mitigation of the proposed civil penalty:

1. The Licensee stated that six of the violations had been identified by its consulting physicist and that corrective actions had been initiated prior to NRC's January 1990 inspection. The violations that the Licensee stated it had identified prior to NRC's inspection are: Violations A, D, E.1, E.2, F, and G.

2. The Licensee stated that it was taking "decisive action to correct these problems" and that it "had corrected or were in various stages of correcting" the six violations noted above, without the threat of a civil penalty.

3. The Licensee attributed the most serious portion of its problems to the failure of a disgruntled employee to perform tasks assigned to him from August to November 1989 (this individual resigned his position in late October 1989) and the concurrent failure of the RSO to properly supervise this individual and detect these deficiencies (this RSO is no longer employed at NMH). The Licensee stated that corrective actions to address these performance-related problems were promptly implemented, without the threat of a civil penalty, when hospital administration became aware of these problems in November 1989.

4. In response to violation C.1, the licensee stated that personal monitoring devices had been provided by another hospital where the two individuals identified in the violation were also employed during this period, and added that it believed this to be within the scope of good radiation safety practice as it would provide a cumulative radiation exposure record.

5. The Licensee stated that NRC's conclusions with respect to Violations B, C.2, C.3 (part 3) and D were incorrectly reached.

NRC Evaluation of Licensee's Request for Mitigation

1. The issue of licensee versus NRC identification of violations raises two policy matters relating to NRC's Enforcement Policy ("General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C): 1) Section V.G.1. of the Enforcement Policy provides that NRC may exercise discretion and not issue a Notice of Violation for licensee-identified Severity Level IV and V violations provided that specific criteria are met; and 2) Section V.B. provides that NRC may adjust a civil penalty (up to a 50% increase or decrease of the base civil penalty) depending on whether the licensee identified, promptly reported, and immediately corrected the violation of violations that led to the proposal of a civil penalty.

Inherent in the first case, however, are two factors of some relevance here. Specifically, NRC will apply this discretion only in cases of isolated Severity Level IV and V violations and not in cases of numerous Severity Level IV and V violations that suggest a more widespread problem with compliance, and NRC will apply this discretion only if the violations were or will be corrected (from the time the licensee identified them), including measures to prevent recurrence, within a reasonable time. In the case of NMH, NRC does not view the violations the Licensee claims to have identified and corrected as isolated Severity Level IV and V violations, but as a symptom of a more pervasive problem with compliance and a significant lack of attention to licensed responsibility. As indicated in the July 25, 1990 letter accompanying the Notice, NRC viewed these violations in total as indicate of a lack of management oversight on the part of the Licensee's Radiation Safety Committee (RSC). In addition, NRC does not view the Licensee's corrective actions for the violations it claims to have identified and corrected to have included sufficient measures to prevent recourrence. Thus, NRC does not view this particular discretionary provision as applicable to this case.

Inherent in the second case, that of NRC's discretion to mitigate a proposed civil penalty based on license identification, is the immediacy of a licensee's action to correct the problem upon discovery. NRC's Enforcement Policy states that no consideration will be given to a reduction in penalty if a licensee does not take immediate action to correct the problem upon discovery. Implicit in this factor is a presumption that a licensee's immediate corrective actions were successful in correcting the violation. In light of this factor, a discussion of each of the violation psi necessary.

a. In regard to Violation A, the Licensee admitted that the RSO had failed to perform his incumbent duties, but stated that this problem was identified to hospital administration by the Licensee's consulting physicist in November 1989. The Licensee described actions taken to correct the situation which included verbal and written notification to the RSO. The Licensee attached a copy of its written notification to its response. The Licensee also stated that its approach to this problem was not successful and that the RSO's contract was not renewed, and further stated that this action had been taken prior to any indication from NRC that it was facing a civil penalty.

The NRC staff does not dispute the Licensee's contention that the hospital's consulting physicist and the hospital's administration had recognized the failure of the RSO to perform certain required tasks. However, the License has, in NRC's view, provided little information to suggest that it had recognized the extent of the RSO's failures to ensure compliance with NRC requirements and has provided virtually no information to suggest that its corrective actions upon identification of this problem were effective. The "written notification" to which is referred amounted to a statement within an "Annual Report of the Radiation Safety Officer" which said, "[c]loser observation of activities in the department and closer inspection of records by Radiation Officer will be implemented immediately." This report was completed by the consulting physicist and, although it provided a space for the RSO's signature, the RSO had not signed it. Based on the RSO's admission during the May 10, 1990 inspection that he had not reviewed the regulations for which he was responsible and that he had not reviewed the records that he had signed (see Violation A in the Notice), NRC does not accept the Liensee's conclusion that corrective actions had been taken and concludes that the Licensee had not recognized the extent of the problem with respect to the RSO and his responsibilities.

Further, the Licensee presented a renewal contract to this RSO after the June 1990 inspection. The administrator had reviewed the content of this contract with the inspector during the June inspection, indicating that he believed that this document would clearly define the RSO's responsibilities. This came after the enforcement conference, by which time the Licensee had been clearly put on notice that the violations described in the inspection report could result in the assessment of a monetary civil penalty. NRC later learned that this RSO had resigned his duties with NMH of his own accord, and was designated as an authorized user at

another facility in July 1990. NRC staff subsequently contacted the Licensee to confirm this fact, and this was acknowledged by the administrator during a telephone conversation on July 11, 1990.

In NRC's view, the Licensee failed to recognize the extent of the RSO's failures and, by its own admission, initiated corrective actions that were not successful in correcting the problem. In that the problem continued and was occurring at the time of NRC's inspections, NRC concludes that the Licensee's identification of this violation does not warrant mitigation of the proposed civil penalty within the framework of NRC's Enforcement Policy.

b. In regard to Violation D, the Licensee stated that it had identified the need for better syringe shields in April 1989 and that these were in use by August 1989.

While the Licensee may indeed have identified the need for better syringe shields in April 198, and may have been using these in August 1989, these facts have little to do with the specific violation. Violation D involves the Licensee's technologist admitting that he failed to use a syringe shield on certain occasions when preparing radiopharmaceutical kits in 1988 and 1989. The specific reason that this violation occurred was a failure to have syringe shields of a sufficient size to accommodate the larger syringes used with certain kits.

In that the Licensee had not identified the specific issue that was the subject of this violation, NRC concludes that there is no basis on which to mitigate the proposed civil penalty within the framework of NRC's Enforcement Policy.

c. In regard to Violation E.1, the Licensee stated that the failure to perform daily constancy checks on the dose calibrator was identified by its consulting physicist on November 10, 1989 and was corrected shortly afterwards.

The NRC staff does not dispute the Licensee's assertion that the consulting physicist identified the failure to perform dose calibrator constancy checks on each day of use. However, the staff notes that the Licensee's corrective action was not prompt in that this requirement was violated on November 11, 26, and 28, 1989. Additionally, the Licensee's corrective actions did not include measures which would prevent recurrence of this problem should the same circumstances (new employee or temporary replacement) that contributed to this violation arise again.

In that the Licensee took no immediate corrective action upon discovering this problem, and in that the violation occurred on three separate occasions following the Licensee's identification of it, NRC concludes that the Licensee's identification of this violation does not warrant mitigation of the proposed civil penalty within the framework of NRC's Enforcement Policy.

d. In regard to Violation E.2, the Licensee stated that the "potential" of this problem occurring was identified by the consulting physicist in February 1990, and that the technologist had attempted to conduct a dose calibrator linearity test in March 1990. The Licensee stated that a satisfactory test was not performed until the consulting physicist returned to the hospital in May 1990, at which time the unit was found to be performing correctly.

The NRC staff acknowledges the fact that the Licensee's consulting physicist brought this problem to the Licensee's attention in February 1990, and that the technologist attempted to conduct the required linearity test in March 1990, as described in the inspection report. However, at the time of the May 1990 inspection, the test had not yet been completed or evaluated. The NRC staff notes that the Licensee had ample time to conduct the required linearity test once it had been brought to its attention by the consultant.

In that this violation occurred despite the Licensee's consulting physicist identifying it as a potential problem, NRC concludes that the Licensee's identification of this violation does not warrant mitigation of the proposed civil penalty within the framework of NRC's Enforcement Policy.

e. In regard to Violation F, the Licensee stated that the failure to include all required information in patient radiopharmaceutical dosage records had been identified in April and November 1989. The Licensee further stated that it believed that only one patient dose record was incomplete at the time of the May 10, 1990, inspection.

The NRC staff does not dispute the Licensee's statement that it had identified omissions in patient radiopharmaceutical dose records. However, this was a recurring problem and had not been corrected by the time of the January and May 1990 inspections. During the inspection conducted in May 1990, the inspectors determined that the Licensee's technical staff was not familiar with NRC requirements regarding patient dose records. Although the inspector noted in June 1990 that patient dose records showed considerable improvement, there were records which were not entirely complete for three of the five examinations conducted since the previous inspection. (These records were later completed by the technologist.)

In that this violation was recurring and was continuing at the item of NRC's inspections in January and May 1990, NRC concludes that the Licensee's identification of the violation does not warrant mitigation of the proposed civil penalty within the framework of NRC's Enforcement Policy.

f. In regard to Violation G, the Licensee acknowledged the failure to label radiopharmaceutical syringes or syringe shields, but stated that his problem had been identified in April 1989, and that continued progress to correct the problem had been made.

The NRC staff does not dispute the Licensee's assertion that it identified the failure to label syringes in April 1989. However, the NRC staff notes that, as admitted by a NRC employee, this was a recurring problem and continued well beyond the Licensee's identification of it.

In that this violation continued well past the Licensee's identification of it, NRC concludes that the Licensee's identification of the violation does not warrant mitigation of the proposed civil penalty within the framework of NRC's Enforcement Policy.

In summary, NRC does not consider the Licensee's arguments in regard to the identification of the violations as warranting mitigation of the civil penalty within the framework of NRC's Enforcement Policy. In NRC's view, the Licensee failed to recognize the extent of its compliance problems, failed to implement immediate corrective actions in response to the consulting physicist's identification of problems, or had failed to implement corrective actions that were successful in correcting a problem and preventing its continuation. In that the problems identified by NRC's inspection were of a continuing nature and were occurring at the time of the inspections, NRC concludes that, in relation to the identification issue, mitigation is not warranted, and that escalation of the base penalty by 50%, as proposed, is appropriate.

2. With regard to corrective actions, the issue here is whether mitigation of the proposed civil penalty is warranted based on the Licensee's corrective actions taken after NRC's inspections. NRC acknowledges that the Licensee was taking some steps toward correcting the problems identified by NRC's inspections. However, the Licensee's response referred primarily to

actions it believes it had underway even before NRC's inspections took place. For the reasons already discussed, NRC finds those actions to have been lacking and insufficient to correct the problems. At the time of the June 1, 1990, enforcement conference, the Licensee was unable to describe corrective actions to address the scope of NRC's concerns regarding lack of sufficient management oversight to ensure compliance with regulatory requirements. In addition, because the Licensee was unable to describe corrective actions related to the specific violations in the Notice, NRC scheduled and conducted another inspection in June 1990 following the enforcement conference. As a result of the June inspection, NRC concluded that the corrective actions the Licensee took following NRC's January and May 1990 inspections were neither prompt nor extensive, were narrowly focused on the individual violations, and failed to address the broader issue of management and control of licensed activities.* The NRC expects full, complete, and long lasting corrective action, whether or not the licensee expects a civil penalty. In regard to the Licensee's resolution of personnel performance-related problems, NRC notes that the former RSO left Newman Memorial Hospital voluntarily and that this occurred after the Licensee was on notice that a civil penalty was possible. For these reasons, NRC concludes in relation to corrective actions that mitigation of the civil penalty is not warranted and that escalation of the base civil penalty by 50%, as proposed, was appropriate.

3. NRC acknowledges that several of the violations may be attributed to the failure of certain Licensee employees to complete required tasks. Nonetheless, as NRC's Enforcement Policy makes clear in Section V.A., licensees are responsible for the actions (or omissions) of their employees. It is a licensee's responsibility to ensure that all individuals participating in licensed activities are well trained and are conducting licensed activities in accordance with NRC regulations and license conditions. Thus, NRC concludes that the circumstances surrounding these particular violations do not warrant consideration of mitigation of the civil penalty.

4. In regard to violation C.1, although the NRC staff acknowledges that these individuals may have worn personal monitoring devices provided by another facility, this does not relieve the licensee of the requirement to provide these devices to employees in activities under this license. Separate devices would indicate in which facility an exposure occurred in order to correct problems and achieve exposure as low as reasonably achievable.

5. NRC's evaluation of the Licensee's arguments in denying three violations in their entirety and one violation in part are addressed in detail above. In that NRC concluded that each of the violations occurred as stated in the Notice, NRC concludes that the Licensee's arguments do not provide a basis for mitigating the civil penalty.

NRC Conclusion

Based on NRC's evaluation of the Licensee's responses, the NRC staff concludes that all violations occurred as stated and that Newman Memorial Hospital has provided no information to cause NRC to modify the proposed civil penalty. Accordingly, the NRC staff concludes that a civil penalty of $5,000 should be imposed by order.

[FR Doc. 90–30594 Filed 12–31–90; 8:45 am]
BILLING CODE 7590–01–M

* As a result of a subsequent incident, the Licensee voluntarily suspended licensed activity pending completion of corrective action.

POSTAL SERVICE

Privacy Act of 1974; Computer Matching Program

AGENCY: Postal Service.

ACTION: Notice of Computer Matching Program.

SUMMARY: The purpose of this notice is to provide information for public comment concerning the Postal Service's plan to conduct a computer matching program. This notice meets publication requirements of subsection (e)(12) of the Privacy Act of 1974 (5 U.S.C. 552a, as amended by Public Law 100–503, the Computer Matching Privacy and Protection Act of 1988).

DATES: The matching program will begin as stated in paragraph "B. Dates of the Matching Program" in the "Reporting of Computer Matching Program" set forth below.

ADDRESSES: Comments may be mailed to USPS Records Officer, U.S. Postal Service, 475 L'Enfant Plaza SW., room 10670, Washington, DC 20260–5010, or delivered to Room 10670 at the above address between 8:15 a.m. and 4:45 p.m. Comments received may also be inspected during the above hours in Room 10670.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Office (202) 268–5158.

SUPPLEMENTARY INFORMATION: Subsection (e)(12) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Public Law 100–503), requires agencies to publish notice of the establishment or revision of a computer matching program. The Postal Service plans to establish an internal agency matching program comparing postal employee records with postal vendor records, performed with the objective of identifying postal employees who have improperly conducted themselves in connection with award of a Postal Service contract. Set forth below is the information required by OMB Bulletin No. 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public," dated September 20, 1989 implementing subsection (e)(12).

Report of Computer Matching Program—United States Postal Service (internal agency match of payroll file with vendor file)

A. *Participating Agencies:* United States Postal Service (the proposed match involves two internal Postal Service record files.)

B. *Dates of the Matching Program:* The matching program is expected to begin in February 1991 and to continue in effect for 18 months unless terminated earlier by either party, provided no comments are received which result in a contrary determination. Matching activity under this program will begin no sooner than 30 days after the last to occur of the following: (1) Publication of this notice; (2) transmittal of the matching agreement to Congress; or (3) report of the matching program to OMB and to Congress.

C. *Brief Description of the Matching Program:*

1. *Purpose:* The Postal Service has an obligation to ensure the integrity of the procurement process and to protect agency resources. The purpose of this matching program is to identify employees who have improperly exercised their influence to steer contract awards to companies owned and operated by themselves, by family members, or others; and to identify employees linked to the procurement function who are involved in financial conflict of interest, fraud, misrepresentation, or other situations in violation of Postal Service Standards of Conduct. The matching program is expected to be performed on a semi-annual basis and will be conducted,

supervised, and coordinated by the Postal Inspection Service.

2. *Legal Authorities for its Operation.* The Postal Inspection Service is authorized under 39 U.S.C. 404 to conduct civil and criminal investigations of violations of postal laws, including attempts to corrupt the postal procurement process and defraud the Postal Service.

3. *Categories of Individuals Involved and Identification of Records Used:* This matching program involves one Privacy Act system of records, "USPS 050.020, Finance Records—Payroll System," most recently published at 54 FR 43667 on October 26, 1989, amended at 55 FR 20554 on May 17, 1990. That system contains Postal Service employee data which will be compared with data in the Postal Service's vendor payment files (these files relate to businesses and, therefore, are not covered by the Privacy Act). The data elements to be used from USPS 050.020 are employee name and home address, occupation title, and work location. The data elements to be used from the vendor payment file are vendor name and address, vendor number, type of payment, and payment data. Matches will be made on the basis of identical nine-digit ZIP Codes for the employee and vendor. A match of nine-digit ZIP Codes will indicate that the employee's home address and the vendor's address is the same physical geographical location. No adverse action will be based solely on such a match; the match merely indicates a need for further review to determine whether there is criminal misconduct on the part of the vendor or employee. Review will include an identification of the transaction and examination of procurement files, employee records, and/or information from other sources from which verification of identity and compliance with postal procurement policy can be made. Where review indicates potential misconduct, case files may be established within the parameters of USPS 080.010, Inspection Requirements-Investigative File System (last published at 54 FR 43675 of October 26, 1989). Where it is established that misconduct is present, administrative disciplinary action and/or prosecution may be initiated. However, no such action will be taken until the individual has received notice of adverse findings and has been given an opportunity to contest them, as required by Public Law 100–503.

D. *Address for Receipt of Public Comments or Inquiries:* USPS Records Officer, U.S. Postal Service, 475 L'Enfant Plaza SW., Room 10670, Washington, DC 20260–5010.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 90–30609 Filed 12–31–90; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF STATE

[Public Notice 1317]

Study Group 9 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 9 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will hold an open meeting January 16, 1991 at the Federal Communication Commission, 1919 M Street, NW., Washington, DC in Room 534 commencing at 9:30 a.m.

Study Group 9 deals with matters relating primarily to the study of radio relay systems. The purpose of the meeting is to review ongoing Working Party and Task Group activities, to review the results of the Interim Working Party 9/6 meeting, and to prepare for the meeting of Joint Interim Working Party WARC–92 in March 1991.

Members of the general public may attend the meeting and join in the discussion subject to instructions of the Chairman. Request for further information should be directed to Mr. Alex Latker, International Conference Staff, Common Carrier Bureau, Federal Communication Commission, Washington, DC 20554, phone (202) 632–3214.

Dated: December 14, 1990.

Warren G. Richards,

Chairman, U.S. CCIR National Committee.

[FR Doc. 90–30581 Filed 12–31–90; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice 1318]

United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT) Study Group A Meeting; Meeting

The Department of State announces that Study group A (Policy and Services) of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on Wednesday, January 16, 1991, in Conference Room 1105 and on February 21, 1991, in Conference Room 1107, both meetings to commence at 10:00 A.M. at the Department of State, 2201 C Street NW, Washington, DC 20520.

The Agenda for the meetings will include the following:

1. Debrief and review of the results of Ad Hoc Group for Resolution #18 session, January 29 to February 8, 1991.
2. Preparatory activities for the upcoming meetings of CCITT Study Group III (Geneva, March 4–15 and London, March 18–22, 1991—.
3. Preparation for the CCITT Study Group II Meeting (Geneva, March 12–22, 1991).
4. Preparation for CCITT Study Group I Meeting, May 28–June 7, 1991.
5. Future Schedule of Work Activities.
6. Other business.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Persons who plan to attend should so advise the Office of Earl S. Barbely, Department of State, (202) 647–2592, FAX (202) 647–7407. The above includes government and non-government attendees. All attendees must use the C Street entrance.

Date: December 14, 1990.

Earl S. Barbely,

Director, Telecommunications and Information Standards, Chairman U.S. CCITT National Committee.

[FR Doc. 90–30582 Filed 12–31–90; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Boire Field-Nashua Airport, Nashua, New Hampshire FAA Approval of Noise Compatibility Program

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Nashua Airport Authority under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and non-federal responsibilities in Senate Report No. 96–52 (1980). On May 24, 1990, the FAA determined that the noise exposure

maps, submitted by the City of Nashua, New Hampshire, under part 150, were in compliance with applicable requirements. On October 31, 1990, the Assistant Administrator approved the Boire Field, Nashua Airport (ASH) noise compatibility program. Out of the 11 proposed program elements, 10 were approved. One was disapproved for lack of sufficient information.

EFFECTIVE DATE: The effective date of the FAA's approval of the ASH noise compatibility program is October 31, 1990.

FOR FURTHER INFORMATION CONTACT: John C. Silva, Federal Aviation Administration, New England Region, Airports Division, ANE–602, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone (617) 283–7060.

Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the ASH noise compatibility program, effective October 31, 1990.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter the Act), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulation (FAR), part 150 is a local program, not a federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act, and is limited to the following determinations:

(a) The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

(b) Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

(c) Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the federal government; and

(d) Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator as prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982. Where Federal funding is sought, requests for project grants must be submitted to the FAA Regional Office in Burlington, Massachusetts.

The Nashua Airport Authority submitted to the FAA, on April 3, 1990, noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from October 1988 to November 1989. The ASH noise exposure maps were determined by FAA to be in compliance with applicable requirements on May 4, 1990. Notice of this determination was published in the **Federal Register** on May 24, 1990.

The ASH study contains a proposed noise compatibility program comprised of actions designated for phased implementation by airport management and adjacent jurisdictions from the date of study completion to beyond the year 1993. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on May 4, 1990, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such a program within the 180-day period shall be deemed to be an approval of such a program.

The submitted program contained 11 proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective October 31, 1990.

Approval was granted for 10 specific program elements. One element (construct noise berm) was disapproved for lack of sufficient information.

The 10 approved program elements include a preferential runway use program, preferential departure flight tracks, engine runup restriction, endorsement of new runway construction, acquisition of development rights, program monitoring, a noise complaint system, procedures for plan update, proposals to change zoning, comprehensive planning, discretionary review of projects, and donation of avigation easements.

FAA's determinations are set forth in detail in a Record of Approval endorsed by the Assistant Administrator October 30, 1990. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the office of the Nashua Airport Authority, Boire Field, 93 Perimeter Road, Nashua, New Hampshire.

Issued in Burlington, Massachusetts on December 18, 1990.

Vincent A. Scarano,

Manager, Airports Division New England Region.

[FR Doc. 90–30590 Filed 12–31–90; 8:45 am]

BILLING CODE 4910-13-M

Westfield-Barnes Municipal Airport, Westfield, Massachusetts, FAA Approval of Noise Compatibility Program

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility

program submitted by the City of Westfield, Massachusetts under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and non-federal responsibilities in Senate Report No. 96–52 (1980). On May 4, 1990, the FAA determined that the noise exposure maps, submitted by the City of Westfield, Massachusetts, under part 150, were in compliance with applicable requirements. On October 26, 1990, the Assistant Administrator approved the Westfield-Barnes Municipal Airport (BAF) noise compatibility program. Out of the 16 proposed program elements, 13 were approved. One was approved in part and two were disapproved.

EFFECTIVE DATE: The effective date of the FAA's approval of the BAF noise compatibility program is October 26, 1990.

FOR FURTHER INFORMATION CONTACT: John C. Silva, Federal Aviation Administration, New England Region, Airports Division, ANE–602, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone (617) 273–7060. Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the BAF noise compatibility program, effective October 26, 1990.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter the Act), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulation (FAR), part 150 is a local program, not a federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act, and is limited to the following determinations:

(a) The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

(b) Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

(c) Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types of classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the federal government; and

(d) Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator as prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982. Where Federal funding is sought, requests for project grants must be submitted to the FAA Regional Office in Burlington, Massachusetts.

The City of Westfield submitted to the FAA, on April 25, 1990, noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from September 1985 to February 1989. The BAF noise exposure maps were determined by FAA to be in compliance with applicable requirements on May 4, 1990. Notice of this determination was published in the **Federal Register** on May 24, 1990.

The BAF study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to beyond the year 1990. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on May 4, 1990, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such a program within the 180-day period shall be deemed to be an approval of such a program.

The submitted program contained 16 proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective October 26, 1990.

Approval was granted for 13 specific program elements. One element (full nighttime bidirectional runway use) was approved in part. Another element (construction of a noise barrier) was disapproved pending submission of additional information. A separate element (nighttime-noise-based surcharge and restriction of nighttime training activity) was disapproved for lack of sufficient information with which to make an informed analysis under part 150.

The 13 approved program elements include a preferential runway system, modification of aircraft departure tracks, monitoring of runway use and flight tracks, periodic evaluation of noise exposure, a continuing Noise Abatement Committee, soundproofing, easement acquisition, airport zoning, environmental review by local land use boards, real estate disclosure, and voluntary undeveloped land acquisition.

FAA's determinations are set forth in detail in a Record of Approval endorsed by the Assistant Administrator October 26, 1990. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the office of the Airport Manager, Barnes Municipal Airport, Westfield, Massachusetts.

Issued in Burlington, Massachusetts on December 18, 1990.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 90-30591 Filed 12-31-90; 8:45 am]

BILLING CODE 4910-13-M

Intent To Prepare an Environmental Impact Statement; Burbank-Glendale-Pasadena Airport, Burbank, CA.

AGENCY: Federal Aviation Administration (FAA), Transportation.

ACTION: Notice of intent.

SUMMARY: The Western-Pacific Region of the FAA announces: (1) The FAA and the Burbank-Glendale-Pasadena Airport Authority (BGPAA), acting as joint lead agencies, intends to prepare Draft and Final Environmental Impact Statements (EIS) concerning a proposal to: (a) Acquire land, as necessary, and (b) develop new terminal facilities, on a staged basis, that ultimately would be able to accommodate up to seven million enplaned passengers annually, and (2) that the Federal EIS scoping process will consist of a public meeting and a period of time for interested agencies, organizations, and persons to submit written comments describing the concerns and issues they believe should be addressed in the Draft EIS.

COMMENT PERIOD: In order to be considered, written comments must be received by Mr. William T. Johnstone (AWP-611.3), Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007, (telephone 213 297-1621) on or before Monday, February 18, 1991.

PUBLIC MEETING: To facilitate the receipt of information from the public, a scoping meeting will be held Thursday, January 24, 1991, at 6 p.m. in the Burbank Airport Hilton Hotel, 2500 Hollywood Way, Burbank, California.

SUPPLEMENTARY INFORMATION: It has been determined that an EIS is required for this project since the potential for increased air and ground traffic, increased noise levels, and significant environmental impacts exist. Information, data, views and comments obtained in the course of the scoping process from Federal, state and local governmental agencies, public and private organizations, and other interested persons, may be used in defining the issues and concerns to be examined in the Draft EIS.

Documents related to the proposed action that may be useful in defining issues and concerns may be reviewed at the following locations:

Reference Coordinator, Burbank Central Library, 110 North Glenoaks, CA 91502.

Glendale Central Library, 222 East Harvard, Glendale, CA 91209.

Neighborhood Information Service, Pasadena Public Library, 285 E. Walnut Street, Pasadena, CA 91101.

Issued in Hawthorne, California on December 7, 1990.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 90-29878 Filed 12-31-90; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-90-53]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 22, 1991.

ADDRESSES: Send comments on any petition in triplicate to Federal Aviation Administration, Office of Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rule Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9683.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on December 21, 1990.

Denise Donohue Hall,

Manager, Program Management Staff Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 23147
Petitioner: Boeing Commercial Airplane Group
Sections of the FAR Affected: 14 CFR 91.515(a)(1)
Description of Relief Sought: To allow petitioner to conduct noise measurement tests, ground proximity warning systems research and development, and FAA certification flight tests at altitudes lower than 1,000 feet above the surface.

Docket No.: 26394
Petitioner: Mr. George L. Cummins II
Sections of the FAR Affected: 14 CFR 65.91(c)(2)
Description of Relief Sought: To allow petitioner to be eligible for an inspection authorization without having been actively engaged for the entire 2-year period prior to application in maintaining aircraft certificated and maintained in accordance with the Federal Aviation Regulations.

Dispositions of Petitions

Docket No.: 24440
Petitioner: American Flyers
Sections of the FAR Affected: 14 CFR 141.91(a)
Description of Relief Sought/ Disposition: To extend Exemption No. 4419, as amended, which allows petitioner to conduct flight training in its approved courses of training at satellite bases that are more than 25 miles from its main operations base. *GRANT, December 17, 1990, Exemption No. 4419C.*

Docket No.: 24671
Petitioner: Bell Helicopter Textron, Inc.
Sections of the FAR Affected: 14 CFR 21.231(a)(2)
Description of Relief Sought/ Disposition: To allow petitioner to apply for a delegation option authorization for type, production, and airworthiness certification of its transport category helicopters.

GRANT, December 14, 1990, Exemption No. 5257.

Docket No.: 24800
Petitioner: Tennessee Air Cooperative, Inc.
Sections of the FAR Affected: 14 CFR 103.1(e)(1)
Description of Relief Sought/ Disposition: To extend Exemption No. 5001, which allows petitioner to operate powered ultralight vehicles at an empty weight of more than 254 pounds. *GRANT, December 14, 1990. Exemption No. 5001A.*

Docket No.: 25052
Petitioner: Temsco Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.203(a)(1)
Description of Relief Sought/ Disposition: To extend Exemption No. 4760A,which allows petitioner and other air taxi/commercial operators to conduct seaplane operations inside the Ketchikan, Alaska, control zone under Special Visual Flight Rules below 500 feet above the surface. *GRANT, December 17, 1990. Exemption No. 4760B.*

Docket Nos.: 26162, 26178, 26196, 26191
Petitioners: American Airlines, Continental Airlines, Eastern Air Lines, and Northwest Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.358
Description of Relief Sought/ Disposition: To allow an extension of the compliance date by which windshear equipment must be installed. *GRANT, December 12, 1990. Exemption No. 5256.*

Docket No.: 26227
Petitioner: Saab-Scania AB (on behalf of Air Midwest, AMR Eagle, Bar Harbor, Business Express, Chautaugua, Comair, Metroflight, Metro Air Northeast, Northwest Airlink, 340 Associates, Kelly Springfield, and Philip Morris)
Sections of the FAR Affected: 14 CFR 91.167, 121.371, 121,378, 135.429, and 135.435
Description of Relief Sought/ Disposition: To allow Air Midwest, et al., to utilize petitioner to repair, overhaul, and alter the airframes of the SAAB 340 aircraft they operate. *GRANT, December 14, 1990. Exemption No. 5258.*

Docket No.: 26332
Petitioner: Learjet, Inc.
Sections of the FAR Affected: 14 CFR 47.65
Description of Relief Sought/ Disposition: To exempt petitioner from the citizenship requirement to allow issuance of a Dealers Aircraft Registration Certificate to petitioner. *GRANT, December 13, 1990. Exemption No. 5259.*

[FR Doc. 90–30592 Filed 12–31–90; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Renegotiation Board Interest Rate; Prompt Payment Interest Rate

Although the Renegotiation Board is no longer in existence, other Federal Agencies are required to use interest rates computed under the criteria established by the Renegotiation Act of 1971 (Pub. L. 92–41). For example, the Contracts Disputes Act of 1978 (Pub. L. 95–563) and the Prompt Payment Act (Pub. L. 97–177) are required to calculate interest due on claims * * * at a rate established by Secretary of the Treasury pursuant to Public Law 92–41 (85 Stat. 97) for the Renegotiation Board."

Therefore, notice is hereby given that, pursuant to the above mentioned sections, the Secretary of the Treasury has determined that the rate of interest applicable for the purpose of said sections, for the period beginning January 1, 1991, and ending on June 30, 1991, is 8⅜ per centum per annum.

Dated: December 26, 1990.

Marcus W. Page,

Deputy Fiscal Assistant Secretary.

[FR Doc. 90–30608 Filed 12–31–90; 8:45 am]
BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

Wage Committee; Meetings

The Department of Veterans Affairs (VA) in accordance with Pub. L. 92–463, gives notice that meetings of the VA Wage Committee will be held on:
Wednesday, January 16, 1991, at 2:00 p.m.
Wednesday, January 23, 1991, at 2:00 p.m.
Wednesday, February 6, 1991, at 2:00 p.m.
Wednesday, February 20, 1991, at 2:00 p.m.
Wednesday, March 6, 1991, at 2:00 p.m.
Wednesday, March 20, 1991, at 2:00 p.m.

The meetings will be held in room 1161, Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Department of Veterans Affairs and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, and as cited in 5 U.S.C. 552b(c) (2) and (4).

However, members of the public are invited to submit material in writing to the Chairperson for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairperson, VA Wage Committee, room 1175, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: December 21, 1990.

By Direction of the Secretary:

Laurence M. Christman,

Executive Assistant, Office of Program Coordination and Evaluation.

[FR Doc. 90–30571 Filed 12–31–90; 8:45 am]
BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 1
Wednesday, January 2, 1991

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).

INTERSTATE COMMERCE COMMISSION

Commission Conference

TIME AND DATE: 10:00 a.m., Wednesday, January 2, 1991.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: Short Notice of Commission Conference.

The Commission will meet to discuss among themselves the following agenda item. Although the conference is open for the public observation, no public participation is permitted.

MATTER TO BE DISCUSSED: Commission's Budget Submission to the Office of Management and Budget.

CONTACT PERSON FOR MORE INFORMATION: A. Dennis Watson, Office of Government and Public Affairs, Telephone: (202) 275–7252, TDD: (202) 275–1721.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90–30515 Filed 12–28–90; 2:54 pm]

BILLING CODE 7035–01–M

NUCLEAR REGULATORY COMMISSION

DATES: Weeks of December 31, 1990 and January 7, 14, and 21, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of December 31

Thursday, January 3

1:30 p.m.
Briefing on NRC Technical Training Center (Public Meeting)
3:00 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Program Fraud Civil Remedies Act (10 CFR Part 13)—Final Rule (Tentative)

Week of January 7—Tentative

Thursday, January 10

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 14—Tentative

Friday, January 18

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 21—Tentative

Thursday, January 24

1:30 p.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)
3:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 90–30514 Filed 12–28–90; 2:08 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of December 31, 1990.

A closed meeting will be held on Thursday, January 3, 1991, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b (c)(4), (8), (9)(A) and (10) and 17 CFR 200.402 (a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Thursday, January 3, 1991, at 2:30 p.m., will be:

Settlement of administrative proceedings of an enforcement nature.

Institution of administrative proceedings of an enforcement nature.

Instition of injunctive actions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Daniel Gray at (202) 272–2300.

Jonathan G. Katz,

Secretary.

December 27, 1990.

[FR Doc. 90–30555 Filed 12–28–90; 3:54 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 56, No. 1
Wednesday, January 2, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Forest Service

Kamas Valley Cattle Allotment Analysis; Kamas Ranger District of the Wasatch-Cache National Forest, Summit County, UT

Correction

In notice document 90-29729 beginning on page 52204, in the issue of Thursday, December 20, 1990, make the following correction:

On page 52205, in the first column, in the first line, "December 11, 1991" should read "December 11, 1990".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018-AB43

Temporary Subsistence Management Regulations for Public Lands in Alaska

Correction

In rule document 90-15264 beginning on page 27114 in the issue of Friday, June 29, 1990, make the following corrections:

§ —.24 100.24 [Corrected]

1. On page 27155, in § --- .24, in paragraph (f)(7)(vii), in the third column, in the eighth line from the top of the column, "(c)" should read "(C)".

2. On page 27159, in § --- .24, paragraphs (f)(10)(xii) in the first column through (f)(11)(xiv) in the third column should be removed. The text removed duplicated text appearing on page 27158

3. On page 27163, in § --- .24, in paragraph (f)(13)(vi), in the first column, in the fifth line from the bottom of the column, "(c)" should read "(C)".

BILLING CODE 1505-01-D

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; TIL-1]

Truth in Lending; Proposed Update to Offical Staff Commentary

Correction

In proposed rule document 90-27894 beginning on page 49392 in the issue of Wednesday, November 28, 1990, make the following corrections:

1. On page 49392, in the second column, in the third paragraph from the bottom, in the sixth and seventh lines, "5a(c) Direct-Mail Applications and Solicitations" should be placed as a separate heading above the second paragraph from the bottom.

2. On page 49393, in the third column, in the last paragraph, in the ninth line, "provided" should read "provide", and in the sixth line from the bottom of the column, "expendable" should read "extendable".

3. On page 49394, in the first column, in *Section 226.20-Subsequent Disclosure Requirements*, the heading "29(a) Refinancings"should read "20(a)Refinancings".

4. On the same page, in *Section 226.4*, in the third column, in the sixth line, after "on" insert "to".

5. On the same page and in the same column, in *Section 226.5a*, under *5a(c) Direct-Mail Applications and Solicitations* in the paragraph numbered 2., in the 10th line, "eliminate" should read "eliminates".

6. On page 49395, in *Section 226.5a*, in the first column, in the first paragraph numbered 2., in the second line, after "(e)", insert "(1)".

7. On the same page, in the third column, in *Section 226.9*, in amendatory instruction 13., in the third line, after "first", insert "sentence".

8. On page 49396, in *Section 226.12* in the first column, in the third line, "disclosure" should read "disclosures".

9. On the same page and in the same column, in *Section 226.17*, in the last bulleted paragraph, in the 15th line, "authorization" should read "amortization".

10. On the same page, in the second column, in *Section 226.19*, under "3.*Intermediary agent or broker.* ***"in the second paragraph, in the third line, remove "period of" and under "5. *Examples of Variable-rate transactions.*", in the bulleted paragraph, in the ninth line, remove the first "the".

11. On the same page and in the third column, remove the heading *Section 226.10 [Amended].*

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—PDES Inc.

Correction

In notice document 90-28789 appearing on page 50787, in the issue of Monday, December 10, 1990, in the second column, in the fourth line from the bottom of the column,, "July 18, 1985" should read "July 18, 1989".

BILLING CODE 1505-01-D

federal register

Wednesday
January 2, 1991

Part II

Federal Election Commission

11 CFR Parts 100, et al.

Public Financing of Presidential Primary and General Election Candidates; Notice of Proposed Rulemaking

FEDERAL ELECTION COMMISSION

[Notice 1990-19]

11 CFR Parts 100, 106, 110, 9001-9007, 9012, and 9031-9039

Public Financing of Presidential Primary and General Election Candidates

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission requests comments on proposed revisions to its regulations governing publicly financed Presidential primary and general election candidates. These regulations implement the provisions of 26 U.S.C. chapters 95 and 96, the "Presidential Election Campaign Fund Act" and the "Presidential Primary Matching Payment Account Act." These statutes establish requirements for determining when Presidential candidates are eligible for public financing, how such funds may be spent and the Commission's obligation to audit publicly financed campaigns and to seek repayment when appropriate. The proposed rules reflect the Commission's experience in administering this program during the 1988 Presidential election cycle and also seek to anticipate some questions that may arise during the 1992 Presidential election cycle. In addition to requesting comments on the specific proposals in this notice, the Commission is also seeking comments on several issues for which no specific regulatory language is proposed at this time. No final decisions have been made by the Commission on any of the proposed revisions in this Notice. Further information is provided in the supplementary information which follows.

DATES: Comments must be received on or before February 19, 1991.

ADDRESSES: Comments must be made in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, (202) 376-5690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Commission is reviewing its regulations governing public financing of Presidential campaigns at 11 CFR parts 9001 *et seq.* and 9031 *et seq.*, in preparation for its administration of this program during the upcoming 1992 election cycle. Please note that the commission has recently promulgated final rules regarding the submission of computerized information maintained or used by Presidential primary and general election candidates receiving federal funding. See 55 FR 40377 (October 3, 1990). The text of the final magnetic media rules is included where appropriate in this document. The Commission is also considering possible revisions to the rules governing Presidential nominating conventions at 11 CFR part 9008 in a separate rulemaking. See 55 FR 34267 (August 22, 1990). The draft rules which follow include cites to the proposed convention rules. In addition, it may be necessary to initiate a separate rulemaking at a later point to address the issues raised by a possible shortage in the Presidential Election Campaign Fund.

The areas in which the Commission is considering possible revisions at this point are described below. These issues are presented in the order in which they arise during the public financing process. For some issues, proposed language is included in the draft rules which follow. In other cases, however, the Commission requests comments on possible approaches for which no regulatory language has been prepared. Finally, one conforming amendment to the rules implementing title 2 of the United States Code is discussed in the last portion of this narrative.

A. Candidate Agreements

Presidential candidates seeking federal funds for their primary or general election campaigns must agree to comply with various conditions set forth in 11 CFR 9003.1(b) or 9033.1(b) to be eligible to receive these funds. Comments are sought regarding several proposed revisions to these conditions. First, 11 CFR 9003.1(b) and 9033.1(b) would be revised so that the candidate agreement provisions conform to the new magnetic media rules regarding the production of computerized information or magnetic diskettes or magnetic tapes in accordance with the new technical standards. See 11 CFR 9003.6 and 9033.12.

The Commission is also considering adding language to the candidate agreement regulations to require that committee reports containing schedules generated from computerized files must list in alphabetical order the sources of the receipts and payees. For individuals, including contributors and payees, the list must be in alphabetical order by surname. However, presidential campaign committees would not be required to computerize their records if they do not wish to do so. The new provision is intended to remedy situations in which committees maintain computerized records of contributors or payees in alphabetical order, but file schedules with the order of the names scrambled. That practice makes it very difficult, if not impossible to locate particular names on the committee's reports if the schedules are voluminous, thereby thwarting the public disclosure purposes of the FECA and making it more difficult to monitor compliance with the contribution limits.

The third change would be to require presidential candidates and their authorized committees to obtain and provide upon the Commission's request records regarding funds received and disbursements made on the candidate's behalf by other committees and organizations associated with the candidate. The proposed language would apply, for example, to pertinent records that the Commission needs to audit the candidate's Presidential campaign committee or to make repayment determinations, which are maintained by the candidate's PAC.

Finally, new language would be added to the candidate agreement provisions regarding contributions which appear to be illegal. Currently, 11 CFR 103.3(b)(4) permits all political committees to retain contributions that appear to be illegal for a limited period while they make inquiries as to whether the contributions are permissible. Political committees have the option of either depositing such questionable contributions in a separate account or maintaining sufficient funds to ensure that none of these contributions are used while their legality is in question. The Commission is now proposing including new language in the candidate agreement regulations requiring presidential candidates and their authorized committee(s) to verify on a monthly basis that they are continuing to maintain sufficient funds to make all possible refunds of impermissible contributions, and to retain worksheets and bank records supporting the verifications. The Commission notes that these committees would be verifying their book balances, not the balance in their bank accounts. The proposed language would assist in monitoring compliance with § 103.3(b)(4).

B. Payment of Matching Funds

As a result of the Commission's experiences in administering the matching fund program during the 1988 presidential primary elections, the Commission is considering several modifications to its regulations implementing this program.

1. Possible Deficiency in the Matching Payment Account

The Commission has previously notified both the President and Congress of a projected shortage in the Presidential Election Campaign Fund for the 1992 presidential election cycle. The priorities established by the public financing statutes indicate that a shortfall would affect the availability of matching funds for primary candidates before it would affect general election or convention financing. See 26 U.S.C. 9006(c), 9008(a) and 9037. Accordingly, the Commission is considering adding to section 9034.1(a) of its regulations a cross-reference to 26 U.S.C. 9037 and 11 CFR part 9037 to alert candidates that their receipt of matching funds could be affected by the amount of funds available in the matching payment account. In addition, the Commission has been working with the Treasury Department on implementing the Secretary of the Treasury's statutory obligation to achieve an equitable distribution of the funds available. As noted above, the Commission may initiate a separate rulemaking to conform existing procedures to the new Treasury Department rules.

2. High Error Rates In Matching Fund Submissions.

The current rules at 11 CFR 9036.2(c) indicate that in Presidential election years the Commission will usually certify within five business days of receipt of matching fund submissions an amount for payment from the matching payment account, which amount is based on the Commission's holdback procedures. If an eligible candidate is entitled to any additional amount, the Commission will so certify within 20 business days. However, if the projected dollar value of nonmatchable contributions (i.e. the error rate) in the submission exceeds 10% of the amount requested, any additional amount will be certified in 25 business days. This section of the rules also permits the filing of letter requests in lieu of full submissions on certain conditions. The staff time needed to process matching fund requests tends to increase as the error rates of submissions increase. Consequently, the Commission is now considering increasing to 30 business days the time for certifying additional amounts for matching fund submissions with error rates exceeding 15%. In addition, the Commission is also considering suspending a committee's ability to submit letter requests until its error rate has been reduced to 15% or less.

In the alternative, comments are sought on whether the Commission should reject matching fund submissions where statistical sampling indicates error rates exceeding 15%, and return these submissions to the candidates for corrective action. Under this approach, the candidate would be provided with a notice of the types of non-matchable contributions identified in the sample. The candidate would be given the option of making corrections or withdrawing the submission entirely. For an eligible candidate, a holdback payment would already have been certified. If the candidate cannot correct the submission and return it to the Commission within three business days, the amount previously paid would be adjusted from the payment to be certified for the next submission presented. However, a rejected submission could be returned to the Commission at any time after the candidate believed adequate corrections have been made. The Commission has previously sought comment on this approach. See 47 FR 35,893–94 (Aug. 17, 1982). Please note that the draft matching fund regulations which follow do not contain specific language on either alternative because the Treasury Department's proposals regarding a shortfall in the Presidential Election Campaign Fund may necessitate additional changes.

3. Requiring Computer Tapes at Matching Fund Submission Stage

The Commission requests comments on whether to require all committees that have computerized their contributor lists to submit magnetic tapes or magnetic diskettes at the time of submission for matching purposes. However, draft language to accomplish this has not been included in the following matching fund rules in 11 CFR 9036.1(b)(1) and 9036.2(b)(1)(ii). Currently, the submission of computerized information at this stage is optional. Nevertheless, committees are encouraged to submit computer tapes or computer diskettes because this enables the Commission to process their submissions more efficiently. Now that the Commission has prepared new technical standards for the submission of computer tapes and computer diskettes during the mandatory audit, it may be feasible to require committees that rely on computerized contributor records to submit magnetic tapes or diskettes at the matching fund stage. For committees that already submit computer-generated paper printouts, it should be relatively easy to provide a computer tape or diskette as well. However, this proposal would not require presidential campaign committees to computerize part or all of their financial records if they do not wish to do so.

4. Matching Redesignated and Reattributed Contributions

The Commission has prepared proposed language that would be added to the matchability requirements set forth in 11 CFR 9034.2(c)(1) to clarify that contributions reattributed to a joint contributor must meet the reattribution requirements of 11 CFR 110.1(k) and must be accompanied by the documentation described in 11 CFR 110.1(1). Draft language is also under consideration to clarify that contributions redesignated for a different election or redesignated for a legal and accounting compliance fund are not matchable. See draft 11 CFR 9034.3(k). Additional reattribution and redesignation questions are discussed below. See section F *infra*.

5. Determination of Date of Ineligibility

Under the Matching Payment Account Act, a candidate's continued eligibility to receive matching funds is based upon receipt of at least 10% of the popular vote cast in the party's primary elections if the candidate has permitted or authorized his or her name to appear on the ballot, unless the candidate certifies to the Commission that he or she will not be an active candidate in a particular primary. 26 U.S.C. 9033(c). During the 1988 primary election cycle a question arose regarding the effect of a candidate's certification that he or she will not be an active candidate in a primary if the candidate subsequently receives 10% or more of the popular votes cast in that primary. The Commission is now proposing a revision to 11 CFR 9033.5(b) to clarify that if a candidate certifies his or her nonparticipation in a particular election, that election will not be counted in determining the candidate's date of ineligibility regardless of whether he or she receives more or less than 10% of the popular vote. Thus the election will not be used to disqualify such candidates receiving less than 10%, and it will not count to the advantage of candidates exceeding the 10% cutoff.

6. Continuing to Campaign After Date of Ineligibility

As noted above, a candidate's eligibility to receive federal matching funds is predicated upon his or her ability to receive at least 10% of the vote in each primary election. The Presidential Primary Matching Payment Account Act specifically recognizes that

a candidate who has fallen below this level of support may reestablish eligibility by obtaining at least 20% of the votes cast in a subsequent primary. 26 U.S.C. 9033(c)(4)(B). However, the regulations do not provide a method for a candidate to use private funds to continue to campaign beyond the date of ineligibility without this affecting the candidate's entitlement to matching funds, since all funds in a publicly funded committee's accounts are considered to be commingled. *See, Kennedy for President Committee* v. *FEC,* 734 F.2d 1558, 1565 at n.11 (DC Cir. 1984); *See, also Reagan for President Committee* v. *FEC,* F.2d 1569 (DC Cir. 1984). Moreover, under the current rules, in calculating a candidate's statement of net outstanding campaign obligations ("NOCO"), a candidate's private contributions are applied to eliminate the pre-date of ineligibility debt before they are used to pay debts incurred in continuing to campaign. Thus, a candidate cannot separate out private funds to be used to continue to campaign. As a result, a candidate who continues to raise private funds after the date of ineligibility may be required to make a repayment based on matching funds received in excess of his or her entitlement or based on nonqualified campaign expenses.

The Commission seeks comments on possible changes that would allow a candidate to use post-ineligibility contributions to continue campaigning after the date of ineligibility without such activity resulting in a repayment of funds in excess of entitlement. One possibility would be to permit the candidate to establish a separate account after the date of ineligibility for the purpose of receiving funds to continue to campaign. Under such an approach, contributions deposited in the separate account could not be submitted for matching and would not reduce the candidate's qualified debt on his or her NOCO statement. Nevertheless, these post-date of ineligibility contributions would be subject to the limitations, prohibitions, recordkeeping and reporting requirements. This approach would necessitate revising 11 CFR 9034.4(a) so that disbursements from this account could only be used to defray qualified campaign expenses incurred after the date of ineligibility. Expenditures made from this separate account would be counted against the spending limits, since the candidate's previous acceptance of matching funds was based on his or her agreement to comply with the spending limits. Although the draft rules which follow do not incorporate this approach, comments are sought as to its advisability.

7. Contribution Refund Listings

The Commission seeks comments on requiring all threshold and non-threshold submissions to include a list of refunded contributions regardless of whether they were submitted for matching. Such a requirement would permit adjustments to be made throughout the matching payment period to reflect refunds of contributions that were submitted and matched. Please note that draft §§ 9036.1(b) and 9036.2(b) which follow do not contain specific language reflecting this proposal. The Commission has previously sought comment on this type of requirement. See 51 FR 28154 (Aug. 5, 1986).

C. Allocation of Expenditures to State Limits

As in the past, many of the issues arising in the 1988 election cycle involved the allocation of expenses to particular states for purposes of the statutory state-by-state spending limitations for Presidential primary candidates receiving matching funds. 2 U.S.C. 441a(b)(1) and 441a(g). In practice, the state limits have the greatest impact in the states holding the first primaries because the spending limits are based on voting age population and do not recognize that the national importance of these primaries extends well beyond the relatively small numbers of delegates at stake. The national significance of the first primary campaigns is shown by their focus on national issues, their coverage by the national and international press, the candidates' appeal to voters nationwide, and the effect these primaries have in winnowing the field of candidates able to continue to campaign in subsequent primaries. The importance of the early primaries has resulted in creative attempts to reduce the amounts allocated to these states for various activities. This, in turn, has necessitated extensive review of committees' allocation practices during the post-primary audits. The Commission is now proposing substantially different regulations intended to resolve some of the current problems and to simplify state allocation.

Under this proposal, the detailed list of allocable expenditures and exemptions set out in current 11 CFR 106.2 would be replaced with a more limited set of allocable expenditures that are directly related to the campaigns in particular states. All other expenditures would be exempted from state allocation, but not from the overall spending limits. The following expenditures would be subject to state allocation:

(1) Expenses for campaign advertising distributed through the broadcast media and print media in a particular state, including commissions, fees or other compensation for such purchases, but excluding production costs and national advertising costs. For broadcast and print media buys distributed to more than one state, allocation would be based on the proportion of viewers or readers in each state.

(2) Expenditures for mass mailings where more than 500 pieces are sent to a given state and expenditures for other campaign materials distributed to the state.

(3) Expenditures for special telephone programs targeted at a particular state, such as voter registration, get out the vote, fundraising or telemarketing programs.

(4) Expenditures for public opinion polls, except those conducted on a nationwide basis. Allocable costs would be based on the number of people interviewed in each state.

(5) Overhead expenses for state offices, but not for national campaign headquarters. Additional guidelines regarding regional offices would be provided.

Under the new approach, presidential primary candidates would no longer have to allocate the following categories of expenditures to specific states:

(1) Interstate and intrastate travel and subsistence expenses for the candidate and his or her campaign staff.

(2) Salaries of campaign staff working in a given state.

Finally, this new approach would simplify the application of the fundraising exemption by treating a fixed 20% of a committee's expenditure limitation for each state as exempt fundraising costs. This proposal would replace the current 28 day rule set forth at 11 CFR 110.8(c)(2), and the timing of fundraising activities would no longer be of significance. In addition, new rules implementing this proposal would supersede AO 1988–6 in which the Commission concluded that 50% of the costs of broadcasting a particular advertisement may be excluded from state allocation under the fundraising exemption. The Commission welcomes suggestions as to other changes to the state allocation regulations that could be made to resolve some of the difficulties presented by the current approach.

Under the new allocation proposal, 11 CFR 106.2 would be amended as follows. Paragraph (a) would be revised to indicate that only the expenditures indicated in this section must be

allocated to particular states. Current paragraphs (b) and (c) would be combined into new paragraph (b), covering the following costs:

1. Media Expenditures

The current approach requiring allocation of print and broadcast advertising, but excluding national advertising and media production costs, would be continued in the proposed rules which follow. However, modifications are proposed regarding commissions. Section 106.2(b)(2)(i)(B) currently provides for state-by-state allocation of any commission charged for the purchase of broadcast media using industry market data. The commission has encountered situations in recent audits in which committees have sought to claim very low amounts as media commissions in comparison to the amounts claimed as production costs, and in comparison to the amounts of commissions in previous presidential election cycles. Comments are sought on how to determine whether the amount paid to the advertising firm or media consultant represents the usual and normal charge for the services provided. In addition, the draft rules which follow would change the term "commission" to "commission, fee or other compensation" to recognize that a variety of compensation arrangements may be made.

2. Mass Mailings and Other Campaign Materials

The Commission has prepared new language at draft § 106.2(b)(2)(ii) to specifically require the allocation of the costs associated with mass mailings and other distributions of campaign materials to a state. Such costs are allocable under current § 106.2. This proposal would incorporate the concept of mass mailings found in the franked mail statutes applicable to members of Congress. 39 U.S.C. 3210(a)(6).

3. Overhead Expenditures for State Offices and Regional Offices

In 1983 the Commission promulgated rules regarding the allocation of overhead expenditures of a campaign committee's regional office. Since that time, a number of questions have arisen as to what is properly considered a regional office. Consequently, the Commission is considering including a variety of factors in 11 CFR 106.2(b)(2)(iii) to provide further guidance as to what will be considered a *bona fide* regional office and how overhead expenses should be allocated to each state in the region. The factors have been drawn from the 1987 Explanation and Justification of § 106.2 and from several previous audits. See 52 FR 20864 (June 3, 1987). The proposed rules would continue to require allocation for state offices, but not for national campaign headquarters. These provisions would also be reorganized so that the definition of "overhead expenditures" only appears once. Comments are also requested as to whether the definition of overhead expenditures in draft § 106.2(b)(2)(iii)(D) should be expanded to include the following examples: facilities and equipment rental for events in a State; temporary offices established while the candidate is traveling in the State or in the final weeks before the primary election; facilities established in border communities; overhead type expenses paid by campaign staff and reimbursed by the campaign such as miscellaneous supplies, copying, printing, and telephone expenses; or the cost of vehicles leased for extended periods and used in a particular State.

4. Expenditures for Special Telephone Programs

The Commission is considering replacing its current allocation rules for interstate and intrastate telephone calls with new language that would require allocation of the expenditures incurred for special telephone programs targeted at a particular state. This would include special programs such as voter registration, get out the vote efforts, fundraising, or telemarketing calls designed to increase candidate recognition and support among voters in the state. This proposal would be consistent with the Commission's previous interpretation of 11 CFR 106.2(b)(2)(iv) regarding interstate telephone calls, which was upheld by the DC Circuit in *John Glenn Presidential Committee, Inc.* v. *FEC*, 822 F.2d 1097 (DC Cir. 1987). Comments are sought as to whether the allocable expenses for special telephone programs should include the costs of office rental. This would cover the costs of renting office space for a limited period specifically for the purpose of conducting the program, as well as a *pro rata* portion of the campaign committee's state office or national headquarters if used to conduct the program.

5. Public Opinion Polls

Paragraph (b)(2)(v) of proposed § 106.2 would continue the current approach regarding the allocation of polling expenses. Thus, expenditures incurred for public opinion polls covering one state would be allocable to that state. Polls covering two or more states would continue to be allocable to those states based on the number of people interviewed in each state, but polls conducted on a nationwide basis would not be allocable. The proposed rule would also specify that allocable expenses include the costs of designing and conducting a poll, such as consultants' fees and travel costs.

6. Fundraising Exemption

In Advisory Opinion 1988–6 the Commission was presented with the question of whether part of the costs of broadcasting a candidate's political advertisement in a particular state could be treated as an exempt fundraising expense pursuant to 11 CFR 100.8(b)(21) and 106.2(c)(5) if the advertisement concluded with a brief message urging the viewers to contribute to the candidate's campaign. On the basis of a previous decision made in one of the 1984 presidential audits, the Commission concluded that it would be reasonable for the candidate to allocate 50% of the costs of this advertisement to exempt fundraising, provided the advertisement was not broadcast within 28 days before the state's primary election. *See* 11 CFR 110.8(c)(2).

Since that time, presidential campaigns have tried to broaden the application of the fundraising exemption set forth in 11 CFR 106.2(c)(5)(ii) and 110.8(c)(2) in a variety of ways. For example, committees have sought to deduct 50% or more of the costs associated with candidate appearances at various political events designed to attract voters on the theory that the incidental distribution of solicitation materials is sufficient to qualify for the fundraising exemption. In other situations, committees have sought to apply the fundraising exemption to the costs of a telemarketing program targeted at voters in a key primary state. However, these telephone calls have tended to focus on voter education and garnering support, and have not always included a fundraising appeal. One committee claimed the fundraising exemption for such telephone calls because follow-up letters requesting contributions were sent to some of the voters contacted. Finally, some committees have sought to exclude part of their broadcast media costs from state allocation as exempt compliance costs incurred for including the disclaimer notice required by 2 U.S.C. 441d(a). They have based this allocation on an analogy to the principle set out in AO 1988–6.

To address the fundraising issues, new language is being proposed which would simplify the application of the fundraising exemption by allowing

committees to treat up to 20% of the spending limit for each state as exempt fundraising costs, and by permitting this amount to be excluded from the committees' total allocable expenditures for that state. This proposal would replace the current 28 day rule set forth at 11 CFR 110.8(c)(2), and would not be affected by the timing of specific fundraising activities. The new rules implementing this proposal would supersede AO 1988–6. A cross-reference would also be included in 11 CFR 106.2(b) to assist the reader in locating the fundraising exemption from the state spending limits.

One reason for proposing a fundraising deduction of up to 20% of the state spending limits is that the statute already establishes a comparable fundraising exemption from the overall spending limit of up to 20%. Moreover, if the Commission adopts the proposed changes to 11 CFR 110.8(c)(2), it will no longer examine disbursements claimed under the exemption to determine whether they are related to fundraising efforts. Thus, this approach also recognizes that there may be a fundraising component to all of the committee's campaign-related activity. Comments are also requested regarding other ways to accommodate the special needs of candidates who must devote more time and effort to fundraising during the first two primaries to obtain enough money to be perceived as viable candidates for their party's nomination.

The Commission's proposal would also result in a simplification of the way in which the 20% fundraising exemption from the overall spending limit is determined. Under draft § 100.8(b)(21), the amounts excluded at the state level would be added to an amount excluded at the national level to permit committees to claim the full benefit of the 20% fundraising exemption established by the FECA. Section 9035.1(c) would also be revised to reflect this new method for determining the amount excluded from the overall spending limit for exempt fundraising activity. However, these changes would not affect the overall spending limits that apply with regard to certain general election candidates under 11 CFR 9003.3(b)(6) and (c)(7).

7. Costs Excluded from Allocation

As indicated above, the draft allocation rules are intended to eliminate several problems encountered by the Commission and by committees under the current rules. For example, the current rules require the allocation of intrastate travel and subsistence expenses, as well as salary expenses, for persons working in a particular state for five consecutive days or more. 11 CFR 106.2(b)(2) (ii) and (iii). The original purpose of these provisions was to simplify the allocation of travel and salary expenses. However, in administering these requirements, the Commission has found that the rule forces committees to create and maintain travel itineraries for many trips by candidates and campaign staff so that the Commission may determine the length of their stays in particular states. In addition, questions have arisen as to whether travel expenses of independent consultants, as well as travel and salary costs for a committee's vendors' employees, are also subject to this five day rule. Other questions have involved the application of the exemption for interstate travel set out at 11 CFR 106.2(c)(4) in situations where campaign staff commute on a regular basis to and from airports or hotels located across the border in a neighboring state. Consequently, the effects of the five day rule for salaries and intrastate travel, and the interstate travel exemption have been to complicate, not to simplify, allocation.

To alleviate these difficulties, the Commission is now considering excluding all interstate and intrastate travel and salary expenses from state allocation. This would allow the Commission to devote its limited resources to monitoring other aspects of the Matching Fund Program. Moreover, if salaries are excluded from state allocation, § 106.2 could be further simplified by eliminating the current language permitting committees to exclude 10% or more of campaign workers' salaries from state allocation as exempt compliance costs. 11 CFR 106.2(c)(5). Please note, however, that salaries would continue to be counted against the overall spending limit for primary candidates, and campaigns could continue to deduct 10% of salary costs from the overall limits for compliance activities under 11 CFR 9035.1(c).

8. Recordkeeping and Allocation to the Next Primary State

The Commission has encountered situations in which campaign materials or supplies, such as yard signs or stationery, may have been obtained by a candidate's national headquarters for use in various state primaries, but the committee has not retained records indicating where the materials were actually used. Although shipping records may demonstrate that something was sent to particular states, they may not be sufficiently detailed to identify the nature or value of the items shipped. Similar difficulties can arise when phone banks are used to solicit funds or garner voter support in a particular state, but no copies of scripts or other documentation are available to demonstrate whether such costs should be allocated to the spending limits for the state called.

To remedy these situations, specific recordkeeping requirements have been included in several sections to indicate particular kinds of records committees must maintain regarding these allocable expenses. See *e.g.*, proposed paragraphs 106.2(b)(2) (ii), (iii)(B), (iv), and (v). In addition, the attached rules would add new language generally requiring the retention of all documents supporting allocations of expenditures to particular states and claims of exemption from allocation under this section. If a presidential campaign committee does not maintain these records, the proposal indicates that the allocable expenditures shall be attributed to the state holding the next primary election, caucus or convention after the expenditure is incurred. In an appropriate case, the Commission may also wish to pursue the failure to maintain records under 11 CFR 104.14. Please note that § 106.2 would be reorganized so that the reporting and recordkeeping requirements of that section would be located in paragraphs (c) and (d), respectively.

D. Documentation Supporting Per Diem Payments and Qualified Campaign Expenses

Under the current regulations, the Commission will consider a disbursement to be a qualified campaign expense if the committee presents a canceled check and collateral evidence documenting the purpose of the disbursement. This rule includes several classes of evidence in declining order of preference, including as a last resort evidence that the disbursement is covered by a preestablished written campaign committee policy, such as a per diem policy. See 11 CFR 9033.11(b)(1)(iv). The difficulty is that a canceled check for travel expenses in combination with a per diem policy does not provide sufficient information regarding the expenses in question to demonstrate that the committee allocated the travel expenses correctly under the current state allocation rules set forth at 11 CFR 106.2. The attached draft rules for primary election candidates at 11 CFR 9033.11(b)(1)(iv) would remedy this by allowing committees to submit such collateral evidence if it shows that the expenditure is part of an identifiable program or project which is otherwise sufficiently

documented to permit state allocation. Under this approach, however, per diem policies for travel could still be used as evidence of qualified campaign expenses because the changes discussed above would no longer require state allocation of travel costs. A corresponding revision to 9034.4(b) of the primary election rules is also being considered that would treat payments as nonqualified campaign expenses if the records maintained do not provide sufficient information to accurately allocate the expenses to particular states, such as a lack of records as to the date on which an expense was incurred. The Commission is also proposing revisions to the documentation requirements for general election committees at 11 CFR 9003.5(b)(1)(iv) to ensure that general election expenditures made pursuant to per diem policies are sufficiently documented to demonstrate that they represent qualified campaign expenses.

E. Payments to Other Authorized Committees

In AO 1988–5 questions were raised as to whether a current publicly-funded presidential campaign committee may contribute or loan or transfer funds to another federally funded committee of the same candidate for a previous election cycle for the purpose of paying debts from the earlier campaign. The opinion concluded that such payments are not qualified campaign expenses under 11 CFR 9034.4 and are not includable in the candidate's NOCO statement under 11 CFR 9034.5. However, such payments could be made from excess campaign funds once the audit process is concluded and any repayment or possible penalty obligations have been satisfied. The attached proposed rules include draft language in §§ 9004.4(b)(7) and 9034.4(b)(6) reaffirming the conclusion reached in AO 1988–5 that these payments are not qualified campaign expenses. Accordingly, they could serve as a basis for a repayment determination under 11 CFR 9007.2 or 9038.2.

F. Transfers to a Legal and Accounting Compliance Fund

During the Commission's administration of the public financing program for the 1988 primary elections, questions arose concerning the ability of campaign committees to seek redesignations to legal and accounting compliance funds of contributions properly received during the primary election campaign. The current rules at 11 CFR 9003.3(a)(1)(iii) permit committees to seek redesignations to the compliance fund if they receive contributions that either exceed the primary election limits or that are made after the party's presidential nominee is chosen. Campaign committees may also transfer to the compliance fund amounts remaining in the primary election account that exceed the amount that must be reimbursed to the U.S. Treasury under 11 CFR 9038.2. See 11 CFR 9003.3(a)(1)(ii). The question presented was whether campaign committees could obtain redesignations of contributions properly received during the primary election period, thereby completely eliminating the committee's surpluses and increasing their entitlements to post-ineligibility payments. Please note that this situation only arises if a primary candidate becomes the nominee in the general election. For unsuccessful primary candidates, other rules would apply.

To ensure that candidates are not able to artificially increase their entitlement to post-ineligibility payments, the Commission is now considering revising paragraphs (ii) and (iii) of § 9003.3(a)(1) in the following respects. First, language would be added to permit transfers to legal and accounting compliance funds only if such amounts are not needed to pay remaining primary obligations. In addition, paragraph (iii) would be changed to prevent committees from having nonexcessive primary contributions redesignated for the general election compliance fund if these primary contributions represent funds that are otherwise repayable to the Presidential Primary Matching Payment Account under 11 CFR 9038.2. This is intended to prevent surplus campaigns from avoiding repayment obligations. The proposed changes would also clarify that under paragraph (iii) of § 9003.3(a)(1), redesignated contributions will be subject to the contribution limits for the general election, not the primary. Finally, language would be added to the primary rules at 11 CFR 9034.4(d) to assist the reader in locating the new transfer provision.

G. Media Reimbursement

Under the current regulations at 11 CFR 9004.6 and 9034.6, candidates may seek reimbursement from media personnel for the costs of providing transportation and services to media representatives accompanying the candidate on campaign trips. These provisions also establish the method to be used in determining how much committees may receive from media personnel for such costs. The Commission is considering several possible changes to these rules. The first pertains to the method for calculating each media representatives's pro rata share of the actual cost of the transportation and services made available. Language would be added to explain that the total number of individuals to whom such transportation or services were made available includes campaign staff, media personnel, Secret Service, national security staff and any other individuals traveling with the candidate. The purpose of this language is to prevent situations in which transportation costs for campaign staff or Secret Service are charged to the media.

The second change would indicate that expenditures incurred for transportation or services made available to Secret Service and national security staff, less any reimbursements received, are qualified campaign expenses subject to the overall spending limits. This language follows the Commission's current practice. It would also be consistent with current provisions that treat expenditures incurred for transportation or services made available to media personnel as qualified campaign expenses. This proposal would not affect the amount that the Secret Service and national security staff pay for such transportation and services, since that is established by other federal agencies.

Under the current primary and general election rules, campaign committees may bill the media 110% of the actual pro rata cost of providing transportation and services to media personnel. These provisions recognize the difficulties of administering a major transportation program in the midst of a campaign. However, committees may not deduct from the overall expenditure limitation amounts received that exceed the actual costs of providing transportation and services to the media plus an additional 3% for administrative costs. The Commission is considering revising 11 CFR 9004.6(d) and 9034.6(d) to clarify that the portion of this deduction for the actual costs of providing the transportation and services may not exceed the amount the committee actually expended for such costs.

Another area in which questions have arisen concerns reimbursements from the media exceeding the committee's actual costs plus 3% for administrative costs. As noted above, the current rules permit billing the media for up to 110% of the actual pro rata cost, while allowing a deduction from the expenditure limit of no more than 103% of the actual cost. The current general election regulations at 11 CFR 9004.6(d)(1) require committees to repay

to the United States Treasury all amounts over 103%. The Commission is considering including language to clarify that the amount to be repaid to the Treasury is the amount between 103% and 110%. Amounts received that exceed 110% would have to be returned to the media. The Commission also seeks comments on the disposition of reimbursements received by primary election candidates in instances where the amount exceeds 103% of the actual costs of providing transportation and services to the media. One possibility is to modify 11 CFR 9034.6(d)(1) to follow proposed § 9004.6(d)(1) by requiring primary election committees to return to the United States Treasury amounts over 103% up to the maximum amount that may be received. In the alternative, 11 CFR 9034.6(d)(1) could state that all amounts exceeding 103% of actual costs must be returned to the media on a pro rata basis. Either of these approaches would recognize that reimbursements from the media may cover actual transportation costs and the costs of administering the program, but should not result in a primary candidate's committee making a profit. The Commission requests comments on these alternatives.

H. Joint Fundraising

The joint fundraising rules set out in 11 CFR 9034.8 were revised in 1987 to clarify that each contribution received must be allocated according to the agreed upon formula rather than dividing the proceeds as a whole. See Explanation and Justification for 11 CFR 9034.8(c)(7), 52 FR 20871 (June 3, 1987). Several additional revisions are now under consideration. First, new language would require the allocation formula to indicate the percentage of each contribution that will be allocated to each participant. Thus, the proposed rules would disallow the practice of specifying a particular dollar amount from each contribution to go to one participant with the remainder to be distributed to the others. The problem is that the use of an indeterminate formula like this may make it difficult to properly apportion expenses in advance of receipts. It may also have the effect of maximizing matchability of contributions contrary to the provisions of 11 CFR 9034.8(c)(7)(i). However, the Commission seeks comments on whether there is a need for this type of restriction on allocation formulas.

Another proposed revision would specify that if committees participating in a joint fundraiser elect to form a separate committee to serve as the fundraising representative, that separate committee cannot be a participant in any other joint fundraising efforts. This change would correct two problems. First, there is no explicit allocation formula for determining the amounts to be distributed to each of the original committees. Secondly, there may be confusion as to the amount that may be contributed to the fundraising representative for distribution among the participating committees.

The proposed rules would also delete the current language at 11 CFR 9034.8(c)(1) indicating that the joint fundraising participants must use the formula to allocate fundraising expenses. This change is necessary because 11 CFR 9034.8(c)(8) indicates that the joint fundraising representative allocates expenses based on the percentage of total receipts allocated to each participant. Similarly, the reallocation provisions at 11 CFR 9034.8(c)(7)(ii) would be amended to indicate that reallocation of contributions is the responsibility of the fundraising representative, not the participating candidates. If the proposed changes to 11 CFR 9034.8 are eventually adopted, corresponding changes will also be made in the joint fundraising regulations applicable to nonpresidential candidates, located in 11 CFR 102.17.

I. Subpoenas

During the course of the audits of certain 1988 campaign committees, the Commission has issued subpoenas, as well as sought information informally from committees and from third parties. Accordingly, the Commission has prepared proposed new language to be included at 11 CFR 9007.1(b)(1)(v) and 11 CFR 9038.1(b)(1)(v) to inform candidates that the investigative procedures set forth at 11 CFR 111.11 through 111.15, including the issuance of subpoenas, may be invoked in appropriate cases.

J. Repayment Determinations

The Commission is considering revising the following aspects of the repayment process for presidential primary candidates set forth at 11 CFR 9038.2:

1. Repayment of Interest Received on Federal Funds

The Commission's rules at 11 CFR 9004.5, which pertain to general election candidates, provide for the repayment of interest and other forms of income derived from the investment of public funds. However, a comparable provision was not prepared for primary candidates because the receipt of such investment income before the candidate's date of ineligibility would simply reduce the candidate's net outstanding campaign obligations and increase the amount of any surplus repayment. However, the Commission is now considering adding language to 11 CFR 9038.2(b)(4) to specifically require the repayment of net income received from the investment of surplus public funds after the candidate's date of indelibility.

2. Double Counting of Amounts Repayable under 11 CFR 9038.2 (b)(1) and (b)(2)

The Commission's regulations at 11 CFR 9038.2(b)(1) require primary candidates to repay matching funds received which are in excess of the amount to which the candidates are entitled. A candidate's committee may receive matching funds in excess of the amount to which it is entitled if, for example, it receives matching funds after the candidate's date of ineligibility and the candidate had no net outstanding campaign obligations to justify the amount of a post-ineligibility payment. This can occur if the candidate includes on his or her NOCO statement accounts payable for nonqualified campaign expenses. In such a situation, the Commission's audit may result in the correction of the NOCO statement and a dollar for dollar repayment of the amount determined to exceed the candidate's entitlement.

In addition to the (b)(1) repayment, paragraph (b)(2) of § 9038.2 requires repayment of a portion of all non-qualified campaign expenses incurred and paid between the campaign's date of inception and the date on which the committee's accounts no longer contain any matching funds. Thus, concerns have been raised that if a candidate's entitlement was artificially increased as a result of nonqualified campaign expenses, and a 100% repayment is sought under (b)(1), these nonqualified campaign expenses should be excluded when calculating the amount repayable under (b)(2), to avoid seeking repayment twice for the same funds, or "double counting" them. However, critics of "double counting" contend that this approach makes no distinction, for repayment purposes, between committees that include nonqualified campaign expenses on their NOCO statements and those that do not.

Accordingly, the Commission seeks comments on this issue, and on proposed language in § 9038.2(b)(2) limiting repayment determinations in cases where the Commission has determined there is a direct relationship between excess entitlement and nonqualified campaign expenses. In these cases, repayment determinations

would be limited to repayments for the amount of the excessive entitlement pursuant to (b)(1). Thus, the nonqualified campaign expenses on which the excessive matching fund payment was based would not be the subject of a separate repayment determination under (b)(2). Other (b)(1) repayments, based on different situations such as excessive payments resulting from the Commission's holdback procedures or contributions in the name of another, are not directly related to (b)(2) repayments and would not be covered by this proposed rule. Similarly, the proposal would continue to permit (b)(2) repayment determinations for nonqualified campaign expenses that were not the basis for repayment determinations under (b)(1).

The draft rules would also clarify that the amount representing total deposits under 11 CFR 9038.3(c)(2) is used to determine the repayment specified in 11 CFR 9038.2(b)(2)(iii). A similar clarification would be included in 11 CFR 9007.2(b)(2)(iii). Finally, § 9038.2(b)(2)(iii) would be amended to clarify that the last-in, first-out method of determining when a committee's account no longer contains matching funds only applies to committees that received matching funds after the candidate's date of ineligibility.

3. Exceeding Both the State and the Overall Spending Limits

The Commission has encountered situations in which primary candidates have exceeded both the spending limits for a particular state and the overall spending limit. Disbursements in excess of these spending limits are considered nonqualified campaign expenses. The Commission seeks comments on two possible methods for calculating the candidate's repayment obligations under 11 CFR 9038.2(b)(2) in this situation. The first approach would assume that the state expenditure limitations and the overall expenditure limitations are separate for repayment purposes, but would avoid dual repayment for disbursements that exceed both limits. Thus, this method would operate by assuming that expenditures should count against the spending limits in the order in which they are paid. This assumption would be consistent with other provisions regarding reporting and NOCO determinations. It would be used to identify those particular expenditures that exceed both limits. To avoid double counting, the total amount of disbursements that exceeds both limits would be subtracted from the excessive amount repayable under one limit or the other. Although these disbursements would be considered nonqualified campaign expenses for two reasons, they would be subject to repayment only once.

In contrast, the second approach would simply calculate the repayment using only the larger of the two excessive amounts. The Commission has used the second method in the past. This method assumes that the same disbursements cause both overages. For example, where the amount in excess of the overall limit is larger than the amount in excess of the state limits, the second approach operates by denoting the amount in excess of the state-by-state limitations as a subset of the overall expenditure limitation, regardless of when the expenditures were paid by the committee. To avoid the possibility of double counting, the expenditures that exceed the state-by-state limits are subsumed into the expenditures that exceed the overall limit. Conversely, if the amount of expenditures exceeding the overall limits is the lesser amount, it would be subsumed into the amount of expenditures exceeding the state limits.

A major assumption of that second method is the exceeding the state-by-state limitations is directly related to any exceeding of the overall limitation. While other expenditures in other states where the limits were not exceeded do have some impact on causing a committee to exceed the overall limit, there is a stronger nexus between expenditures that are incurred in a state that has exceeded that state's limitation and the underlying result of exceeding the overall limitation. In practice, few, if any, committees that exceed the overall spending limit are able to stay within the state-by-state spending limits.

The Commission seeks comments on these two alternative methods for calculating repayments.

4. Notification of Repayment Determinations

The Commission's rules at 11 CFR 9038.2(a)(2) indicate that candidates will be notified of repayment determinations as soon as possible, but not later than three years after the end of the matching payment period. New language is now being proposed to explain that the Commission considers the written notice of its preliminary calculations regarding future repayments, which are contained in the interim audit report, to constitute notification for purposes of the three year period. In addition, the proposed rules which follow indicate that if the candidate fails to provide records needed to make a repayment determination, the Commission may notify the candidate that the running of this time period will be suspended until the Commission receives the records. Corresponding language would also be added to 11 CFR 9007.2(a)(2), which pertains to repayment determinations for general election candidates.

5. Shortening the Audit and Repayment Processes.

The Commission is looking for ways to streamline and possibly shorten the audit and repayment processes. Several of the proposals contained in this Notice are intended to help achieve this goal, most prominently the proposed revision of the state allocation rules. Another factor which contributes to the length of the audit stage is the need to conduct additional fieldwork and prepare addenda to audit reports focusing on the committees' receipt and disbursement of funds to defray winding down costs. See 11 CFR 9034.4(a)(3). The Commission therefore welcomes comments on whether to modify the system for the payment or use of funds for winding down purposes to encourage quicker resolution and termination of committee activities, which in turn would reduce the Commission's need to examine the disbursement of large amounts over an extended period after a candidate's date of ineligibility. Possible approaches include making the amount that a candidate is eligible to receive for winding down costs a set percentage of the candidate's total expenditures during the campaign, or a percentage of total matching funds certified for that candidate. Alternatively, the Commission could set a specific time period during which candidates may make expenditures for winding down purposes with federal funds. Other suggestions that would simplify or shorten the required audit process are encouraged. No language has been included in the attached rules regarding these proposals.

K. Title 2 Rules Regarding Redesignation and Reattribution

The Commission also seeks comments on a proposed change to its regulations at 11 CFR 110.1(1) regarding reattributions and redesignations. This proposal, if adopted, would affect both presidential and nonpresidential candidates and political committees conducting activities under the FECA. It is included in this rulemaking because the Commission's administration of the public financing laws has highlighted the need for modifications in this area.

During the audits of several 1988 presidential campaign committees, problems were encountered in verifying that excessive contributions were

reattributed to joint contributors or redesignated for compliance funds within the time periods established by 11 CFR 110.1(b)(5) and (k)(3). To monitor compliance with these requirements, the draft rules which follow would require committees to retain documentation demonstrating that the redesignation or reattribution was received within the 60 day deadline. Proposed 11 CFR 110.1(1)(6) would give committees a fair amount of flexibility as to the type of evidence they may choose to rely upon to demonstrate timely receipt.

Conclusion

The Commission welcomes comments on the foregoing proposed amendments to the public financing regulations, the issues raised in this Notice and on other aspects of the public financing process that could be addressed in these regulations. No final decision has been made by the Commission concerning any of the proposals contained in this Notice.

List of Subjects

11 CFR Part 100

Elections, Political committees and parties.

11 CFR Part 106

Campaign funds, Political candidates, Political committees and parties.

11 CFR Part 110

Campaign funds, Elections, Political candidates, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Parts 9001–9005

Campaign funds, Elections, Political candidates.

11 CFR Part 9006

Campaign funds, Elections, Political candidates, Reporting requirements.

11 CFR Part 9007

Administrative practice and procedure, Campaign funds, Political candidates.

11 CFR Part 9012

Elections, Political candidates, Political committees and parties.

11 CFR Parts 9031–9035

Campaign funds, Elections, Political candidates.

11 CFR Part 9036

Administrative practice and procedure, Campaign funds, Political candidates.

11 CFR Part 9037

Campaign funds, Political candidates.

11 CFR Parts 9038–9039

Administrative practice and procedure, Campaign funds, Political candidates.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that few, if any, small entities are affected by these proposed rules. Further, any small entities affected are already required to comply with the requirements of the Act in these areas.

For the reasons set out in the preamble, it is proposed to amend subchapters A, E and F, chapter I of title 11 of the Code of Federal Regulations as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for part 100 would continue to read as follows:

Authority: 2 U.S.C. 431, 438(a)(8).

2. 11 CFR part 100 would be amended by revising paragraph (b)(21) of § 100.8 to read as follows:

§ 100.8 Expenditure (2 U.S.C. 431(a)).

* * * * *

(b) * * *

(21)(i) Any costs incurred by a candidate or his or her authorized committee(s) in connection with the solicitation of contributions are not expenditures if incurred by a candidate who has been certified to receive Presidential Primary Matching Fund Payments, or by a candidate who has been certified to receive general election public financing under 26 U.S.C. 9004 and who is soliciting contributions in accordance with 26 U.S.C. 9003(b)(2) or 9003(c)(2) to the extent that the aggregate of such costs does not exceed 20 percent of the expenditure limitation applicable to the candidate. These costs shall, however, be reported as disbursements pursuant to 11 CFR part 104.

(ii) For a candidate who has been certified to receive general election public financing under 26 U.S.C. 9004 and who is soliciting contributions in accordance with 26 U.S.C. 9003(b)(2) or 9003(c)(2), "in connection with the solicitation of contributions" means any cost reasonably related to fundraising activity, including the costs of printing and postage, the production of and space or air time for, advertisements used for fundraising, and the costs of meals, beverages, and other costs associated with a fundraising reception or dinner.

(iii) For a candidate who has been certified to receive Presidential Primary Matching Fund Payments, the costs that may be exempted as fundraising expenses under this section shall not exceed 20% of the overall expenditure limitation under 11 CFR 9035.1, and shall equal the total of:

(A) All amounts excluded from the state expenditure limitations for exempt fundraising activities under 11 CFR 110.9(c)(2), plus

(B) An amount of costs that would otherwise be chargeable to the overall expenditure limitation but that are not chargeable to any state expenditure limitation, such as salary and travel expenses. See 11 CFR 106.2.

* * * * *

PART 106—ALLOCATION OF CANDIDATE AND COMMITTEE ACTIVITIES

3. The authority citation for part 106 would continue to read as follows:

Authority: 2. U.S.C. 438(a)(8), 441a(b), 441a(g).

4. 11 CFR part 106 would be amended by revising § 106.2 to read as follows:

§ 106.2 State allocation of expenditures incurred by authorized committees of presidential primary candidates receiving matching funds.

(a) *General.* (1) This section applies to Presidential primary candidates receiving or expecting to receive federal matching funds pursuant to 11 CFR part 9031 *et seq.* The expenditures described in 11 CFR 106.2(b)(2) shall be allocated to a particular State if incurred by a candidate's authorized committee(s) for the purpose of influencing the nomination of that candidate for the office of President with respect to that State. An expenditure shall not necessarily be allocated to the State in which the expenditure is incurred or paid. In the event that the Commission disputes the candidate's allocation or claim of exemption for a particular expense, the candidate shall demonstrate, with supporting documentation, that his or her proposed method of allocation or claim of exemption was reasonable.

(2) Disbursements made prior to the time an individual becomes a candidate for the purpose of determining whether that individual should become a candidate pursuant to 11 CFR 100.7(b)(1) and 100.8(b)(1), i.e., payments for testing

the waters, shall be allocable expenditures under this section if the individual becomes a candidate.

(b) *Method of allocating expenditures among States*—(1) *General allocation method.* Unless otherwise specified under 11 CFR 106.2(b)(2), an expenditure described in 11 CFR 106.2(b)(2) and incurred by a candidate's authorized committee(s) for the purpose of influencing the nomination of that candidate in more than one State shall be allocated to each State on a reasonable and uniformly applied basis. The total amount allocated to a particular State may be reduced by the amount of exempt fundraising expenses for that State, as specified in 11 CFR 110.8(c)(2).

(2) *Specific allocation methods.* Expenditures that fall within the categories listed below shall be allocated based on the following methods. The method used to allocate a category of expenditures shall be based on consistent data for each State to which an allocation is made.

(i) *Media expenditures*—(A) *Print media.* Except for expenditures exempted under 11 CFR 106.2(b)(2)(i) (E) and (F), allocation of expenditures for the publication and distribution of newspaper, magazine and other types of printed advertisements distributed in more than one State, including any commission, fee or other compensation for the purchase of print media, shall be made using relative circulation percentages in each State or an estimate thereof. For purposes of this section, allocation to a particular State will not be required if less than 3% of the total estimated readership of the publication is in that State.

(B) *Broadcast media.* Except for expenditures exempted under 11 CFR 106.2(b)(2)(i) (E) and (F), expenditures for radio, television and similar types of advertisements purchased in a particular media market that covers more than one State shall be allocated to each State in proportion to the estimated audience. This allocation of expenditures, including any commission, fee or other compensation for the purchase of broadcast media, shall be made using industry market data.

(C) *Refunds for media expenditures.* Refunds for broadcast time or advertisement space, purchased but not used, shall be credited to the States on the same basis as the original allocation.

(D) *Limits on allocation of media expenditures.* No allocation of media expenditures shall be made to any State in which the primary election has already been held.

(E) *National advertising.* Expenditures incurred for advertisements on national networks, national cable or in publications distributed nationwide need not be allocated to any State.

(F) *Media production costs.* Expenditures incurred for production of media advertising, whether or not that advertising is used in more than one State, need not be allocated to any State.

(ii) *Expenditures for mass mailings and other campaign materials.* Expenditures for mass mailings of more than 500 pieces to addresses in the same State, and expenditures for producing and distributing campaign materials in a State, including pins, bumperstickers, handbills, brochures, posters and yardsigns, shall be allocated to that State. For purposes of this section, "mass mailing" includes newsletters and other materials in which the content of the materials is substantially identical. Records supporting the committee's allocations under this section shall include: For each mass mailing, documentation showing the total number of pieces mailed and the number mailed to each state or zip code; and, for other campaign materials acquired for use outside the State of purchase, documentation showing the number and value of the total acquired, the number distributed to each State, and records relating to any shipping costs incurred for transporting these items to each State.

(iii) *Overhead expenditures*—(A) *Overhead expenditures of State offices.* Except for expenditures exempted under 11 CFR 106.2(b)(2)(iii)(C), overhead expenditures of committee offices located in a particular State shall be allocated to that State.

(B) *Overhead expenditures of regional offices.* Except for expenditures exempted under 11 CFR 106.2(b)(2)(iii)(C), overhead expenditures of a committee regional office or any committee office with responsibilities in two or more States shall be allocated to each state on a reasonable and uniformly applied basis. Factors the Commission will consider in determining whether an office is a regional office, and in determining whether the amount allocated to each State is reasonable, include, but are not limited to:

(*1*) The geographic proximity of the states covered;

(*2*) The proximity in time of the primaries, caucuses or conventions in the states covered;

(*3*) The amount of campaign activity directed to the primaries, caucuses or conventions in each state;

(*4*) The role of the office in conducting, controlling or coordinating the operation of the campaign in each state;

(*5*) The proportion of telephone calls from the office to each state;

(*6*) The establishment of separate campaign depositories in each state and the overall amount of disbursements made to further the campaign in each state;

(*7*) The amount of travel by campaign staff from the office to each state covered;

(*8*) The presence or absence of a separate state office in each state; and

(*9*) The operation of the office as a regional center for training, meetings or programs targeted to the states covered.

The committee shall maintain records to demonstrate that an office operated on a regional basis. These records should show, for example, the kinds of programs conducted from the office, the number and nature of contacts with other States in the region, and the amount of time devoted to regional programs by staff working in the regional office.

(C) *Overhead expenditures of national campaign headquarters.* Expenditures incurred for administrative, staff, and overhead expenditures of the national campaign headquarters need not be allocated to any State.

(D) *Definition of overhead expenditures.* For purposes of 11 CFR 106.2(b)(2)(iii), overhead expenditures include, but are not limited to, rent, utilities, office equipment, furniture, supplies, and telephone service base charges. "Telephone service base charges" include any regular monthly charges for committee phone service, and charges for phone installation and intrastate phone calls other than charges related to a special program under 11 CFR 106.2(b)(2)(iv). Inter-state calls are not included in "telephone service base charges."

(iv) *Expenditures for special telephone programs.* Expenditures for special telephone programs targeted at a particular State, including the costs of designing and operating the program, the costs of installing or renting telephone lines and equipment, personnel costs, and toll charges, shall be allocated to that State. Special telephone programs include voter registration, get out the vote efforts, fundraising, and telemarketing efforts conducted on behalf of the candidate. Records supporting the committee's allocation of each special telephone program under this section shall include either the telephone bills showing the total number of calls made in that program and the number made to each state; or, a copy of the list used to make

the calls, from which these numbers can be determined.

(v) *Public opinion poll expenditures.* Expenditures incurred for the taking of a public opinion poll covering only one State shall be allocated to that State. Except for expenditures incurred in conducting a public opinion poll on a nationwide basis, expenditures incurred for the taking of a public opinion poll covering two or more States shall be allocated to those States based on the number of people interviewed in each State. Expenditures incurred for the taking of a public opinion poll include consultant's fees, travel costs and other expenses associated with designing and conducting the poll. Records supporting the committee's allocation under this section shall include documentation showing the total number of people contacted for each poll and the number contacted in each State.

(c) *Reporting.* All expenditures allocated under this section shall be reported on FEC Form 3P, page 3.

(d) *Recordkeeping.* All assumptions and supporting calculations for allocations made under this section shall be documented and retained for Commission inspection. In addition to the records specified in paragraph (b) of this section, the treasurer shall retain records, including scripts of media advertisements and phone bank communications, supporting the committee's allocations of expenditures to particular States and claims of exemption from allocation under this section. If an expenditure must be allocated pursuant to this section, and the records supporting the allocation are not retained, the expenditure shall be allocated to the State holding the next primary election, caucus or convention after the expenditure is incurred.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

5. The authority citation for part 110 would continue to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h and 441i.

6. 11 CFR part 110 would be amended by revising paragraph (l) of § 110.1 to read as follows:

§ 110.1 Contributions by persons other than multicandidate political committees (2 U.S.C. 441a(a)(1)).

* * * * *

(l) *Supporting evidence.* (1) If a political committee receives a contribution designated in writing for a particular election, the treasurer shall retain a copy of the written designation, as required by 11 CFR 110.1(b)(4) or 110.2(b)(4), as appropriate. If the written designation is made on a check or other written instrument, the treasurer shall retain a full-size photocopy of the check or written instrument.

(2) If a political committee receives a written redesignation of a contribution for a different election, the treasurer shall retain the written redesignation provided by the contributor, as required by 11 CFR 110.1(b)(5) or 110.2(b)(5), as appropriate.

(3) If a political committee receives a written reattribution of a contribution to a different contributor, the treasurer shall retain the written reattribution signed by each contributor, as required by 11 CFR 110.1(k).

(4) If a political committee chooses to rely on a postmark as evidence of the date on which a contribution was made, the treasurer shall retain the envelope or a copy of the envelope containing the postmark and other identifying information.

(5) If a political committee does not retain the written records concerning designation required under 11 CFR 110.1(l)(2), the contribution shall not be considered to be designated in writing for a particular election, and the provisions of 11 CFR 110.1(b)(2)(ii) or 110.2(b)(2)(ii) shall apply. If a political committee does not retain the written records concerning redesignation or reattribution required under 11 CFR 110.1(l), (2), (3), or (6), the redesignation or reattribution shall not be effective, and the original designation or attribution shall control.

(6) For each written redesignation or written reattribution of a contribution described in paragraph (b)(5) or paragraph (k)(3) of this section, the political committee shall retain documentation demonstrating when the written redesignation or written reattribution was received. Such documentation shall consist of:

(i) A copy of the envelope bearing the postmark and the contributor's name, or return address or other identifying code; or

(ii) A copy of the written redesignation or written reattribution with a date stamp indicating the date of the committee's receipt; or

(iii) A copy of the written redesignation or written reattribution dated by the contributor.

* * * * *

(7) 11 CFR part 110 would be amended by revising paragraph (c)(2) of § 110.8 to read as follows:

§ 110.8 Presidential candidate expenditure limitations.

* * * * *

(c) * * *

(2) The candidate may treat an amount that does not exceed 20% of the expenditure limitation for a particular State as exempt fundraising expenses, and may exclude this amount from the candidate's total expenditures allocable to that State under 11 CFR 106.2.

* * * * *

(8) 11 CFR Parts 9001 through 9007 would be revised to read as follows:

PART 9001—SCOPE

Sec.
9001.1 Scope.

Authority: 26 U.S.C. 9009(b).

§ 9001.1 Scope.

This subchapter governs entitlement to and use of funds certified from the Presidential Election Campaign Fund under 26 U.S.C. 9001 *et seq.* The definitions, restrictions, liabilities and obligations imposed by this subchapter are in addition to those imposed by sections 431–455 of title 2, United States Code, and regulations prescribed thereunder (11 CFR parts 100 through 116). Unless expressly stated to the contrary, this subchapter does not alter the effect of any definitions, restrictions, obligations and liabilities imposed by sections 431–455 of title 2, United States Code, or regulations prescribed thereunder (11 CFR parts 100 through 116).

PART 9002—DEFINITIONS

Sec.
9002.1 Authorized committee.
9002.2 Candidate.
9002.3 Commission.
9002.4 Eligible candidates.
9002.5 Fund.
9002.6 Major party.
9002.7 Minor party.
9002.8 New party.
9002.9 Political committee.
9002.10 Presidential election.
9002.11 Qualified campaign expense.
9002.12 Expenditure report period.
9002.13 Contribution.
9002.14 Secretary.
9002.15 Political party.

Authority: 26 U.S.C. 9002 and 9009(b).

§ 9002.1 Authorized committee.

(a) Notwithstanding the definition at 11 CFR 100.5, *authorized committee* means with respect to a candidate (as defined at 11 CFR 9002.2) of a political party for President and Vice President, any political committee that is authorized by a candidate to incur expenses on behalf of such candidate. The term "authorized committee" includes the candidate's principal campaign committee designated in accordance with 11 CFR 102.12, any

political committee authorized in writing by the candidate in accordance with 11 CFR 102.13, and any political committee not disavowed by the candidate pursuant to 11 CFR 100.3(a)(3). If a party has nominated a Presidential and a Vice Presidential candidate, all political committees authorized by that party's Presidential candidate shall also be authorized committees of the Vice Presidential candidate and all political committees authorized by the Vice Presidential candidate shall also be authorized committees of the Presidential candidate.

(b) Any withdrawal of an authorization shall be in writing and shall be addressed and filed in the same manner provided for at 11 CFR 102.12 or 102.13.

(c) Any candidate nominated by a political party may designate the national committee of that political party as that candidate's authorized committee in accordance with 11 CFR 102.12(c).

(d) For purposes of this subchapter, references to the "candidate" and his or her responsibilities under this subchapter shall also be deemed to refer to the candidate's authorized committee(s).

§ 9002.2 Candidate.

(a) For the purposes of this subchapter, *candidate* means with respect to any presidential election, ar individual who—

(1) Has been nominated by a major party for election to the office of President of the United States or the office of Vice President of the United States; or

(2) Has qualified or consented to have his or her name appear on the general election ballot (or to have the names of electors pledged to him or her on such ballot) as the candidate of a political party for election to either such office in 10 or more States. For the purposes of this section *political party* shall be defined in accordance with 11 CFR 9002.15.

(b) An individual who is no longer actively conducting campaigns in more than one State pursuant to 11 CFR 9004.8 shall cease to be a candidate for the purpose of this subchapter.

§ 9002.3 Commission.

Commission means the Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

§ 9002.4 Eligible candidates.

Eligible candidates means those Presidential and Vice Presidential candidates who have met all applicable conditions for eligibility to receive payments from the Fund under 11 CFR part 9003.

§ 9002.5 Fund.

Fund means the Presidential Election Campaign Fund established by 26 U.S.C. 9006(a).

§ 9002.6 Major party.

Major party means a political party whose candidate for the office of President in the preceding Presidential election received, as a candidate of such party, 5 percent or more, but less than 25 percent, of the total number of popular votes received by all candidates for such office. For the purposes of 11 CFR 9002.6, "candidate" means, with respect to any preceding Presidential election, an individual who received popular votes for the office of President in such election.

§ 9002.7 Minor party.

Minor party means a political party whose candidate for the office of President in the preceding Presidential election received, as a candidate of such party, 5 percent or more, but less than 25 percent, of the total number of popular votes received by all candidates for such office. For the purposes of 11 CFR 9002.7, "candidate" means with respect to any preceding Presidential election, an individual who received popular votes for the office of President in such election.

§ 9002.8 New party.

New party means a political party which is neither a major party nor a minor party.

§ 9002.9 Political committee.

For purposes of this subchapter, *political committee* means any committee, club, association, organization or other group of persons (whether or not incorporated) which accepts contributions or makes expenditures for the purpose of influencing, or attempting to influence, the election of any candidate to the office of President or Vice President of the United States.

§ 9002.10 Presidential election.

Presidential election means the election of Presidential and Vice Presidential electors.

§ 9002.11 Qualified campaign expense.

(a) *Qualified campaign expense* means any expenditure, including a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value—

(1) Incurred to further a candidate's campaign for election to the office of President or Vice President of the United States;

(2) Incurred within the expenditure report period, as defined under 11 CFR 9002.12, or incurred before the beginning of such period in accordance with 11 CFR 9003.4 to the extent such expenditure is for property, services or facilities to be used during such period; and

(3) Neither the incurrence nor the payment of such expenditure constitutes a violation of any law of the United States, any law of the State in which such expense is incurred or paid, or any regulation prescribed under such Federal or State law, except that any State law which has been pre-empted by the Federal Election Campaign Act of 1971, as amended, shall not be considered a State law for purposes of this subchapter. An expenditure which constitutes such a violation shall nevertheless count against the candidate's expenditure limitation if the expenditure meets the conditions set forth at 11 CFR 9002.11(a) (1) and (2).

(b)(1) An expenditure is made to further a Presidential or Vice Presidential candidate's campaign if it is incurred by or on behalf of such candidate or his or her authorized committee. For purposes of 11 CFR 9002.11(b)(1), any expenditure incurred by or on behalf of a Presidential candidate of a political party will also be considered as expenditure to further the campaign of the Vice Presidential candidate of that party. Any expenditure incurred by or on behalf of the Vice Presidential candidate will also be considered an expenditure to further the campaign of the Presidential candidate of that party.

(2) An expenditure is made on behalf of a candidate if it is made by—

(i) Any authorized committee or any other agent of the candidate for the purpose of making an expenditure; or

(ii) Any person authorized or requested by the candidate, by the candidate's authorized committee(s), or by an agent of the candidate or his or her authorized committee(s) to make an expenditure; or

(iii) A committee which has been requested by the candidate, the candidate's authorized committee(s), or an agent thereof to make the expenditure, even though such committee is not authorized in writing.

(3) Expenditures that further the election of other candidates for any public office shall be allocated in accordance with 11 CFR 106.1(a) and will be considered qualified campaign expenses only to the extent that they specifically further the election of the candidate for President or Vice President. A candidate may make

expenditures under this section in conjunction with other candidates for any public office, but each candidate shall pay his or her proportionate share of the cost in accordance with 11 CFR 106.1(a).

(4) Expenditures by a candidate's authorized committee(s) pursuant to 11 CFR 9004.6 for the travel and related ground service costs of media shall be qualified campaign expenses. Any reimbursement for travel and related services costs received by a candidate's authorized committee shall be subject to the provisions of 11 CFR 9004.6.

(5) Legal and accounting services which are provided solely to ensure compliance with 2 U.S.C. 431 *et. seq.* or 26 U.S.C. 9001, *et seq.* shall be qualified campaign expenses which may be paid from payments received from the Fund. If federal funds are used to pay for such services, the payments will count against the candidate's expenditure limitation. Payments for such services may also be made from an account established in accordance with 11 CFR 9003.3 or may be provided to the committee in accordance with 11 CFR 100.7(b)(14) and 100.8(b)(15). If payments for such services are made from an account established in accordance with 11 CFR 9003.3, the payments do not count against the candidate's expenditure limitation. If payments for such services are made by a minor or new party candidate from an account containing private contributions, the payments do not count against that candidate's expenditure limitation. The amount paid by the committee shall be reported in accordance with 11 CFR part 9006. Amounts paid by the regular employer of the person providing such services pursuant to 11 CFR 100.7(b)(14) and 100.8(b)(15) shall be reported by the recipient committee in accordance with 11 CFR 104.3(h).

(c) Expenditures incurred either before the beginning of the expenditure report period or after the last day of a candidate's eligibility will be considered qualified campaign expenses if they meet the provisions of 11 CFR 9004.4(a). Expenditures described under 11 CFR 9004.4(b) will not be considered qualified campaign expenses.

§ 9002.12 Expenditure report period.

Expenditure report period means, with respect to any Presidential election, the period of time described in either paragraph (a) or (b) of this section, as appropriate.

(a) In the case of a major party, the expenditure report period begins on September 1 before the election or on the date on which the major party's Presidential nominee is chosen, whichever is earlier; and the period ends 30 days after the Presidential election.

(b) In the case of a minor or new party, the period will be the same as that of the major party with the shortest expenditure report period for that Presidential election as determined under paragraph (a) of this section.

§ 9002.13 Contribution.

Contribution has the same meaning given the term under 2 U.S.C. 431(8), 441b and 441c, and under 11 CFR 100.7, and 11 CFR parts 114 and 115.

§ 9002.14 Secretary.

Secretary means the Secretary of the Treasury.

§ 9002.15 Political party.

Political party means an association, committee, or organization which nominates or selects an individual for election to any Federal office, including the office of President or Vice President of the United States, whose name appears on the general election ballot as the candidate of such association, committee, or organization.

PART 9003—ELIGIBILITY FOR PAYMENTS

Sec.

9003.1 Candidate and committee agreements.
9003.2 Candidate certifications.
9003.3 Allowable contributions.
9003.4 Expenses incurred prior to the beginning of the expenditure report period or prior to receipt of Federal funds.
9003.5 Documentation of disbursements.
9003.6 Production of computer information.

Authority: 26 U.S.C. 9003 and 9009(b).

§ 9003.1 Candidate and committee agreements.

(a) *General.* (1) To become eligible to receive payments under 11 CFR part 9005, the Presidential and Vice Presidential candidates of a political party shall agree in a letter signed by the candidates to the Commission that they and their authorized committee(s) shall comply with the conditions set forth in 11 CFR 9003.1(b).

(2) Major party candidates shall sign and submit such letter to the Commission within 14 days after receiving the party's nomination for election. Minor and new party candidates shall sign and submit such letter within 14 days after such candidates have qualified to appear on the general election ballot in 10 or more states pursuant to 11 CFR 9002.2(a)(2). The Commission, on written request by a minor or new party candidate, at any time prior to the date of the general election, may extend the deadline for filing such letter except that the deadline shall be a date prior to the date of the general election.

(b) *Conditions.* The candidates shall:

(1) Agree that they have the burden of proving that disbursements made by them or any authorized committee(s) or agent(s) thereof are qualified campaign expenses as defined in 11 CFR 9002.11.

(2) Agree that they and their authorized committee(s) shall comply with the documentation requirements set forth at 11 CFR 9003.5.

(3) Agree that they and their authorized committee(s) shall provide an explanation, in addition to complying with the documentation requirements, of the connection between any disbursements made by the candidates or the authorized committee(s) of the candidates and the campaign if requested by the Commission.

(4) Agree that they and their authorized committee(s) shall verify, at least once a month, that the amount needed to make all refunds required under 11 CFR 103.3(b)(4) continues to be maintained in the authorized committee's account(s), and shall retain worksheets and bank records supporting each verification made.

(5) Agree that they and their authorized committee(s) will keep and furnish to the Commission all documentation relating to receipts and disbursements including any books, records (including bank records for all accounts), all documentation required by this subchapter including those required to be maintained under 11 CFR 9003.5, and other information that the Commission may request. If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the categories of data listed in 11 CFR 9003.6(a), the committee will provide computerized magnetic media, such as magnetic tapes or magnetic diskettes, containing the computerized information at the times specified in 11 CFR 9007.1(b)(1) that meet the requirements of 11 CFR 9003.6(b). Upon request, documentation explaining the computer system's software capabilities shall be provided and such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the committee shall also be made available.

(6) Agree that if their authorized committee(s) file a schedule of itemized receipts or disbursements pursuant to 11 CFR 104.3 that was generated directly or indirectly from computerized files or computerized records, the schedule shall list in alphabetical order the sources of

the receipts and the payees. Such schedule shall list all individuals, including contributors and payees, in alphabetical order by surname.

(7) Agree that they and their authorized committee(s) shall obtain and furnish to the Commission upon request all documentation relating to funds received and disbursements made on the candidate's behalf by other political committees and organizations associated with the candidate.

(8) Agree that they and their authorized committee(s) shall permit an audit and examination pursuant to 11 CFR part 9007 of all receipts and disbursements including those made by the candidate, all authorized committees and any agent or person authorized to make expenditures on behalf of the candidate or committee(s). The candidate and authorized committee(s) shall facilitate the audit by making available in one central location, office space, records and such personnel as are necessary to conduct the audit and examination, and shall pay any amounts required to be repaid under 11 CFR part 9007.

(9) Submit the name and mailing address of the person who is entitled to receive payments from the Fund on behalf of the candidates; the name and address of the depository designated by the candidates as required by 11 CFR part 103 and 11 CFR 9005.2; and the name under which each account is held at the depository at which the payments from the Funds are to be deposited.

(10) Agree that they and their authorized committee(s) shall comply with the applicable requirements of 2 U.S.C. 431 *et seq.*, 26 U.S.C. 9001 *et seq.*, and the Commission's regulations at 11 CFR parts 100–116, and 9001–9012.

(11) Agree that they and their authorized committee(s) shall pay any civil penalties included in a conciliation agreement entered into under 2 U.S.C. 437g against the candidates, any authorized committees of the candidates or any agent thereof.

§ 9003.2 Candidate certifications.

(a) *Major party candidates.* To be eligible to receive payments under 11 CFR part 9005, each Presidential and Vice Presidential candidate of a major party shall, under penalty of perjury, certify to the Commission:

(1) That the candidate and his or her authorized committee(s) have not incurred and will not incur qualified campaign expenses in excess of the aggregate payments to which they will be entitled under 11 CFR part 9004.

(2) That no contributions have been or will be accepted by the candidate or his or her authorized committee(s); except as contributions specifically solicited for, and deposited to, the candidate's legal and accounting compliance fund established under 11 CFR 9003.3(a); or except to the extent necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b).

(b) *Minor and new party candidates.* To be eligibile to receive any payments under 11 CFR part 9005, each Presidential and Vice Presidential candidate of a minor or new party shall, under penalty of perjury, certifiy to the Commission:

(1) That the candidate and his or her authorized committee(s) have not incurred and will not incur qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party are entitled under 11 CFR 9004.1.

(2) That no contributions to defray qualified campaign expenses have been or will be accepted by the candidate or his or her authorized committee(s) except to the extent that the qualified campaign expenses incurred exceed the aggregate payments received by such candidate from the Fund under 11 CFR 9004.2.

(c) *All candidates.* To be eligible to receive any payment under 11 CFR 9004.2, the Presidential candidate of each major, minor or new party shall certify to the Commission, under penalty of perjury, that such candidate will not knowingly make expenditures from his or her personal funds, or the personal funds of his or her immediate family, in connection with his or her campaign for the office of President in excess of $50,000 in the aggregate.

(1) For purposes of this section, the term *immediate family* means a candidate's spouse, and any child, parent, grandparent, brother, half-brother, sister, or half-sister of the candidate, and the spouses of such persons.

(2) Expenditures from personal funds made under this paragraph shall not apply against the expenditure limitations.

(3) For purposes of this section, the terms *personal funds* and "personal funds of his or her immediate family" mean:

(i) Any assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either:

(A) Legal and rightful title, or

(B) An equitable interest.

(ii) Salary and other earned income from bona fide employment; dividends and proceeds from the sale of the candidate's stocks or other investments; bequests to the candidate; income from trusts established before candidacy; income from trusts established by bequest after candidacy of which the candidate is a beneficiary; gifts of a personal nature which had been customarily received prior to candidacy; proceeds from lotteries and similar legal games of chance.

(iii) A candidate may use a portion of assets jointly owned with his or her spouse as personal funds. The portion of the jointly owned assets that shall be considered as personal funds of the candidate shall be that portion which is the candidate's share under the instrument(s) of conveyance or ownership. If no specific share is indicated by any instrument of conveyance or ownership, the value of one-half of the property used shall be considered as personal funds of the candidate.

(4) For purposes of this section, expenditures from personal funds made by a candidate of a political party for the office of Vice President shall be considered to be expenditures made by the candidate of such party for the office of President.

(5) Contributions made by members of a candidate's family from funds which do not meet the definition of personal funds under 11 CFR 9003.2(c)(3) shall not count against such candidate's $50,000 expenditure limitation under 11 CFR 9003.2(c).

(6) Personal funds expended pursuant to this section shall be first deposited in an account established in accordance with 11 CFR 9003.3 (b) and (c).

(7) The provisions of this section shall not operate to limit the candidate's liability for, nor the candidate's ability to pay, any repayments required under 11 CFR part 9007. If the candidate or his or her committee knowingly incurs expenditures in excess of the limitations of 11 CFR 110.8(a), the Commission may seek civil penalties under 11 CFR part 111 in addition to any repayment determinations made on the basis of such excessive expenditures.

(8) Expenditures made using a credit card for which the candidate is jointly or solely liable will count against the limits of this section to the extent that the full amount due, including any finance charge, is not paid by the committee within 60 days after the closing date of the billing statement on which the charges first appear. For purposes of this section, the "closing date" shall be the date indicated on the billing statement which serves as the cutoff date for determining which charges are included on that billing statement.

(d) *Form.* Major party candidates shall submit the certifications required under 11 CFR 9003.2 in a letter which shall be signed and submitted within 14 days after receiving the party's nomination for election. Minor and new party candidates shall sign and submit such letter within 14 days after such candidates have qualified to appear on the general election ballot in 10 or more States pursuant to 11 CFR 9003.2(a)(2). The Commission, upon written request by a minor or new party candidate made at any time prior to the date of the general election, may extend the deadline for filing such letter, except that the deadline shall be a date prior to the day of the general election.

§ 9003.3 Allowable contributions.

(a) *Legal and accounting compliance fund—major party candidates.*—(1) *Sources.* (i) A major party candidate may accept contributions to a legal and accounting compliance fund if such contributions are received and disbursed in accordance with this section. A legal and accounting compliance fund may be established by such candidate prior to being nominated or selected as the candidate of a political party for the office of President or Vice President of the United States.

(A) All solicitations for contributions to this fund shall clearly state that such contributions are being solicited for this fund.

(B) Contributions to this fund shall be subject to the limitations and prohibitions of 11 CFR parts 110, 114, and 115.

(ii) Funds received during the matching payment period that are remaining in a candidate's primary election account, which funds are in excess of any amount needed to pay remaining primary expenses or any amount required to be reimbursed to the Presidential Primary Matching Payment Account under 11 CFR 9038.2, may be transferred to the legal and accounting compliance fund without regard to the contribution limitations of 11 CFR part 110 and used for any purpose permitted under this section. The excess funds so transferred may include contributions made before the beginning of the expenditure report period, which contributions do not exceed the contributor's limit for the primary election. Such contributions need not be redesignated by the contributors for the legal and accounting compliance fund.

(iii) Contributions that are made after the beginning of the expenditure report period but which are designated for the primary election, and contributions that exceed the contributor's limit for the primary election, may be redesignated for the legal and accounting compliance fund and transferred to or deposited in such fund if the candidate obtains the contributor's redesignation in accordance with 11 CFR part 110.1. Contributions that do not exceed the contributor's limit for the primary election may only be redesignated and deposited in the legal and accounting compliance fund if they represent funds in excess of any amount needed to pay remaining primary expenses or any amount required to be reimbursed to the Presidential Primary Matching Payment Account under 11 CFR 9038.2. All contributions so redesignated and deposited shall be subject to the contribution limitations applicable for the general election, pursuant to 11 CFR 110.1(b)(2)(i).

(2) *Uses.* (i) Contributions to the legal and accounting compliance fund shall be used only for the following purposes:

(A) To defray the cost of legal and accounting services provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* in accordance with 11 CFR 9003.3(a)(2)(ii);

(B) To defray in accordance with 11 CFR 9003.3(a)(2)(ii)(A), that portion of expenditures for payroll, overhead, and computer services related to ensuring compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.*;

(C) To defray any civil or criminal penalties imposed pursuant to 2 U.S.C. 437g or 26 U.S.C. 9012;

(D) To make repayments under 11 CFR 9007.2;

(E) To defray the cost of soliciting contributions to the legal and accounting compliance fund;

(F) To defray the cost of producing, delivering and explaining the computerized information and materials provided pursuant to 11 CFR 9003.6 and explaining the operation of the computer system's software; and

(G) To make a loan to an account established pursuant to 11 CFR 9003.4 to defray qualified campaign expenses incurred prior to the expenditure report period or prior to receipt of federal funds, provided that the amounts so loaned are restored to the legal and accounting compliance fund.

(ii)(A) Expenditures for payroll (including payroll taxes), overhead and computer services, a portion of which are related to ensuring compliance with title 2 and chapter 95 of title 26, shall be initially paid from the candidate's federal fund account under 11 CFR 9005.2 and may be later reimbursed by the compliance fund. For purposes of 11 CFR 9003.3(a)(2)(i)(B), a candidate may use contributions to the compliance fund to reimburse his or her federal fund account an amount equal to 10% of the payroll and overhead expenditures of his or her national campaign headquarters and state offices. Overhead expenditures include, but are not limited to rent, utilities, office equipment, furniture, supplies and all telephone charges except for telephone charges related to a special use such as voter registration and get out the vote efforts. In addition, a candidate may use contributions to the compliance fund to reimburse his or her federal fund account an amount equal to 70% of the costs (other than payroll) associated with computer services. Such costs include but are not limited to rental and maintenance of computer equipment, data entry services not performed by committee personnel, and related supplies. If the candidate wishes to claim a larger compliance exemption for payroll or overhead expenditures, the candidate shall establish allocation percentages for each individual who spends all or a portion of his or her time to perform duties which are considered necessary to ensure compliance with title 2 or chapter 95 of title 26. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance and the percentage of time each person spends on such activity.

If the candidate wishes to claim a larger compliance exemption for costs associated with computer services, the candidate shall establish allocation percentages for each computer function that is considered necessary, in whole or in part, to ensure compliance with 2 U.S.C. 431 *et seq.*, and 26 U.S.C. 9001 *et seq.* The allocation shall be based on a reasonable estimate of the costs associated with each computer function, such as the costs for data entry services performed by persons other than committee personnel and processing time. The candidate shall keep detailed records to support such calculations. The records shall indicate which computer functions are considered compliance-related and shall reflect which costs are associated with each computer function. The Commission's Financial Control and Compliance Manual for General Election Candidates Receiving Public Funding contains some accepted alternative allocation methods for determining the amount of salaries and overhead expenditures that may be considered exempt compliance costs.

(B) Reimbursement from the compliance fund may be made to the separate account maintained for federal funds under 11 CFR 9005.2 for legal and accounting compliance services disbursements that are initially paid

from the separate federal funds account. Such reimbursement must be made prior to any final repayment determination by the Commission pursuant to 11 CFR 9007.2. Any amounts so reimbursed to the federal fund account may not subsequently be transferred back to the legal and accounting compliance fund.

(iii) Amounts paid from this account for the purposes permitted by 11 CFR 9003.3(a)(2)(i) (A) through (E) shall not be subject to the expenditure limits of 2 U.S.C. 441a(b) and 11 CFR 110.8. (See also 11 CFR 100.8(b)(15).) When the proceeds of loans made in accordance with 11 CFR 9003.2(a)(2)(i)(F) are expended on qualified campaign expenses, such expenditures shall count against the candidate's expenditure limit.

(iv) Contributions to or funds deposited in the legal and accounting compliance fund may not be used to retire debts remaining from the Presidential primaries, except that, if after payment of all expenses relating to the general election, there are excess campaign funds, such funds may be used for any purpose permitted under 2 U.S.C. 439a and 11 CFR part 113, including payment of primary election debts.

(3) *Deposit and disclosure.* (i) Amounts received pursuant to 11 CFR 9003.3(a)(1) shall be deposited and maintained in an account separate from that described in 11 CFR 9005.2 and shall not be commingled with any money paid to the candidate by the Secretary pursuant to 11 CFR 9005.2.

(ii) The receipts to and disbursements from this account shall be reported in a separate report in accordance with 11 CFR 9006.1(b)(2). All contributions made to this account shall be recorded in accordance with 11 CFR 102.9. Disbursements made from this account shall be documented in the same manner provided in 11 CFR 9003.5.

(b) *Contributions to defray qualified campaign expenses—major party candidates.* (1) A major party candidate or his or her authorized committee(s) may solicit contributions to defray qualified campaign expenses to the extent necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b).

(2) Such contributions may be deposited in a separate account or may be deposited with federal funds received under 11 CFR 9005.2. Disbursements from this account shall be made only to defray qualified campaign expenses and to defray the cost of soliciting contributions to such account. All disbursements from this account shall be documented in accordance with 11 CFR 9003.5 and shall be reported in accordance with 11 CFR 9006.1.

(3) A candidate may make transfers to this account from his or her legal and accounting compliance fund.

(4) The contributions received under this section shall be subject to the limitations and prohibitions of 11 CFR parts 110, 114 and 115 and shall be aggregated with all contributions made by the same persons to the candidate's legal and accounting compliance fund under 11 CFR 9003.3(a) for the purposes of such limitations.

(5) Any costs incurred for soliciting contributions to this account shall not be considered expenditures to the extent that the aggregate of such costs does not exceed 20 percent of the expenditure limitation under 11 CFR 9003.2(a)(1). These costs shall, however, be reported as disbursements in accordance with 11 CFR part 104 and 11 CFR 9006.1. For purposes of this section, a candidate may exclude from the expenditure limitation an amount equal to 10% of the payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices as exempt fundraising costs.

(6) Any costs incurred for legal and accounting services which are provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* shall not count against the candidate's expenditure limitation. Such costs include the cost of producing, delivering and explaining the computerized information and materials provided pursuant to 11 CFR 9003.6 and explaining the operation of the computer system's software. For purposes of this section, a candidate may exclude from the expenditure limitation an amount equal to 10% of the payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices. In addition, a candidate may exclude from the expenditure limitation an amount equal to 70% of the costs (other than payroll) associated with computer services.

(i) For purposes of 11 CFR 9003.3(b)(6), overhead costs include, but are not limited to, rent, utilities, office equipment, furniture, supplies and all telephone charges except for telephone charges related to a special use such as voter registration and get out the vote efforts.

(ii) For purposes of 11 CFR 9003.3(b)(6) costs associated with computer services include, but are not limited to, rental and maintenance of computer equipment, data entry services not performed by committee personnel, and related supplies.

(7) If the candidate wishes to claim a larger compliance or fundraising exemption under 11 CFR 9003.3(b) (5) or (6) for payroll and overhead expenditures, the candidate shall establish allocation percentages for each individual who spends all or a portion of his or her time to perform duties which are considered compliance or fundraising. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance or fundraising and the percentage of time each person spends on such activity.

(8) If the candidate wishes to claim a larger compliance exemption under 11 CFR 9003.3(b)(6) for costs associated with computer services, the candidate shall establish allocation percentages for each computer function that is considered necessary, in whole or in part, to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* The allocation shall be based on a reasonable estimate of the costs associated with each computer function, such as the costs for data entry services performed by other than committee personnel and processing time. The candidate shall keep detailed records to support such calculations. The records shall indicate which computer functions are considered compliance-related and shall reflect which costs are associated with each computer function.

(9) The Commission's Financial Control and Compliance Manual for General Election Candidates Receiving Public Funding contains some accepted alternative allocation methods for determining the amount of salaries and overhead expenditures that may be considered exempt compliance costs or exempt fundraising costs.

(c) *Contributions to defray qualified campaign expenses—minor and new party candidates.* (1) A minor or new party candidate may solicit contributions to defray qualified campaign expenses which exceed the amount received by such candidate from the Fund, subject to the limits of 11 CFR 9003.2(b).

(2) The contributions received under this section shall be subject to the limitations and prohibitions of 11 CFR parts 110, 114 and 115.

(3) Such contributions may be deposited in a separate account or may be deposited with federal funds received under 11 CFR 9005.2. Disbursements from this account shall be made only for the following purposes.

(i) To defray qualified campaign expenses;

(ii) To make repayments under 11 CFR 9007.2;

(iii) To defray the cost of soliciting contributions to such account;

(iv) To defray the cost of legal and accounting services provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.*;

(v) To defray the cost of producing, delivering and explaining the computerized information and materials provided pursuant to 11 CFR 9003.6 and explaining the operation of the computer system's software.

(4) All disbursements from this account shall be documented in accordance with 11 CFR 9003.5 and shall be reported in accordance with 11 CFR part 104 and 9006.1.

(5) Any costs incurred for soliciting contributions to this account shall not be considered expenditures to the extent that the aggregate of such costs does not exceed 20 percent of the expenditure limitation under 11 CFR 9003.2(a)(1). These costs shall, however, be reported as disbursements in accordance with 11 CFR part 104 and 9006.1. For purposes of this section, a candidate may exclude from expenditure limitation an amount equal to 10% of the payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices as exempt fundraising costs.

(6) Any costs incurred for legal and accounting services which are provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* shall not count against the candidate's expenditure limitation. For purposes of this section, a candidate may exclude from the expenditure limitation an amount equal to 10% of the payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices. In addition, a candidate may exclude from the expenditure limitation an amount equal to 70% of the costs (other than payroll) associated with computer services.

(i) For purposes of 11 CFR 9003.3(c)(6), overhead costs include, but are not limited to, rent, utilities, office equipment, furniture, supplies and all telephone charges except for telephone charges related to a special use such as voter registration and get out the vote efforts.

(ii) For purposes of 11 CFR 9003.3(c)(6) costs associated with computer services include but are not limited to, rental and maintenance of computer equipment, data entry services not performed by committee personnel, and related supplies.

(7) If the candidate wishes to claim a larger compliance or fundraising exemption under 11 CFR 9003.3(c)(6) for payroll and overhead expenditures, the candidate shall establish allocation percentages for each individual who spends all or a portion of his or her time to perform duties which are considered compliance or fundraising. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance or fundraising and the percentage of time each person spends on such activity.

(8) If the candidate wishes to claim a larger compliance exemption under 11 CFR 9003.3(c)(6) for costs associated with computer services, the candidate shall establish allocation percentages for each computer function that is considered necessary, in whole or in part, to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* The allocation shall be based on a reasonable estimate of the costs associated with each computer function, such as the costs for data entry services performed by other than committee personnel and processing time. The candidate shall keep detailed records to support such calculations. The records shall indicate which computer functions are considered compliance-related and shall reflect which costs are associated with each computer function.

(9) The candidate shall keep and maintain a separate record of disbursements made to defray exempt legal and accounting costs under 11 CFR 9003.3(c) (6) and (7) and shall report such disbursements in accordance with 11 CFR part 104 and 11 CFR 9006.1.

(10) The Commission's Financial Control and Compliance Manual for General Election Candidates Receiving Public Funding contains some accepted alternative allocation methods for determining the amount of salaries and overhead expenditures that may be considered exempt compliance costs or exempt fundraising costs.

§ 9003.4 Expenses incurred prior to the beginning of the expenditure report period or prior to receipt of Federal funds.

(a) *Permissible expenditures.* (1) A candidate may incur expenditures before the beginning of the expenditure report period, as defined at 11 CFR 9002.12, if such expenditures are for property, services or facilities which are to be used in connection with his or her general election campaign and which are for use during the expenditure report period. Such expenditures will be considered qualified campaign expenses. Examples of such expenditures include but are not limited to: Expenditures for establishing financial accounting systems, expenditures for organizational planning and expenditures for polling.

(2) A candidate may incur qualified campaign expenses prior to receiving payments under 11 CFR part 9005.

(b) *Sources.* (1) A candidate may obtain a loan which meets the requirements of 11 CFR 100.7(b)(11) for loans in the ordinary course of business to defray permissible expenditures described in 11 CFR 9003.4(a). A candidate receiving payments equal to the expenditure limitation in 11 CFR 110.8 shall make full repayment of principal and interest on such loans from payments received by the candidate under 11 CFR part 9005 within 15 days of receiving such payments.

(2) A major party candidate may borrow from his or her legal and accounting compliance fund for the purposes of defraying permissible expenditures described in 11 CFR 9003.4(a). All amounts borrowed from the legal and accounting compliance fund must be restored to such fund after the beginning of the expenditure report period either from federal funds received under 11 CFR part 9005 or private contributions received under 11 CFR 9003.3(b). For candidates receiving federal funds, restoration shall be made within 15 days after receipt of such funds.

(3) A minor or new party candidate may defray such expenditures from contributions received in accordance with 11 CFR 9003.3(c).

(4) (i) A candidate who has received federal funding under 11 CFR part 9031 *et seq.*, may borrow from his or her primary election committee(s) an amount not to exceed the residual balance projected to remain in the candidate's primary account(s) on the basis of the formula set forth at 11 CFR 9038.3(c). A major party candidate receiving payments equal to the expenditure limitation shall reimburse amounts borrowed from his or her primary committee(s) from payments received by the candidate under 11 CFR part 9005 within 15 days of such receipt.

(ii) A candidate who has not received federal funding during the primary campaign may borrow at any time from his or her primary account(s) to defray such expenditures, provided that a major party candidate receiving payments equal to the expenditure limitation shall reimburse all amounts borrowed from his or her primary committee(s) from payments received by the candidate under 11 CFR part 9005 within 15 days of such receipt.

(5) A candidate may use personal funds in accordance with 11 CFR

9003.2(c), up to his or her $50,000 limit, to defray such expenditures.

(c) *Deposit and disclosure.* Amounts received or borrowed by a candidate under 11 CFR 9003.4(b) to defray expenditures permitted under 11 CFR 9003.4(a) shall be deposited in a separate account to be used only for such expenditures. All receipts and disbursements from such account shall be reported pursuant to 11 CFR 9006.1(a) and documented in accordance with 11 CFR 9003.5.

§ 9003.5 Documentation of disbursements.

(1) *Burden of proof.* Each candidate shall have the burden of proving that disbursements made by the candidate or his or her authorized committee(s) or persons authorized to make expenditures on behalf of the candidate or authorized committee(s) are qualified campaign expenses as defined in 11 CFR 9002.11. The candidate and his or her authorized committee(s) shall obtain and furnish to the Commission at its request any evidence regarding qualified campaign expenses made by the candidate, his or her authorized committees and agents or persons authorized to make expenditures on behalf of the candidate or committee(s) as provided in 11 CFR 9003.5(b).

(b) *Documentation required.* (1) For disbursements in excess of $200 to a payee, the candidate shall present either:

(i) A receipted bill from the payee that states the purpose of the disbursement; or

(ii) If such a receipt is not available, a canceled check negotiated by the payee, and

(A) One of the following documents generated by the payee: a bill, invoice, or voucher that states the purpose of the disbursement; or

(B) Where the documents specified in 11 CFR 9003.5(b)(1)(ii)(A) are not available, a voucher or contemporaneous memorandum from the candidate or the committee that states the purpose of the disbursement; or

(iii) If neither a receipted bill as specified in 11 CFR 9003.5(b)(1)(i) nor the supporting documentation specified in 11 CFR 9003.5(b)(1)(ii) is available, a canceled check negotiated by the payee that states the purpose of the disbursement.

(iv) Where the supporting documentation required in 11 CFR 9003.5(b)(1) (i), (ii) or (iii) is not available, the candidate or committee may present a canceled check and collateral evidence to document the qualified campaign expense. Such collateral evidence must show that the expenditure is part of an identifiable program or project which is otherwise sufficiently documented such as a disbursement which is one of a number of documented disbursements relating to a campaign mailing or to the operation of a campaign office.

(2) For all other disbursements the candidate shall present:

(i) A record disclosing the full name and mailing address of the payee, the amount, date and purpose of the disbursement, if made from a petty cash fund; or

(ii) A canceled check negotiated by the payee that states the full name and mailing address of the payee, and the amount, date and purpose of the disbursement.

(3) For purposes of this section:

(i) *Payee* means the person who provides the goods or services to the candidate or committee in return for the disbursement; except that an individual will be considered a payee under this section if he or she receives $500 or less advanced for travel and/or subsistence and if the individual is the recipient of the goods or services purchased.

(ii) *Purpose* means the full name and mailing address of the payee, the date and amount of the disbursement, and a brief description of the goods or services purchased.

(c) *Retention of records.* The candidate shall retain records with respect to each disbursement and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, and any related materials documenting campaign receipts and disbursements, for a period of three years pursuant to 11 CFR 102.9(c), and shall present these records to the Commission on request.

(d) *List of capital and other assets.*— (1) *Capital assets.* The candidate or committee shall maintain a list of all capital assets whose purchase price exceeded $2000 when acquired by the candidate's authorized committee(s). The list shall include a brief description of each capital asset, the purchase price, the date it was acquired, the method of disposition and the amount received in disposition. For purposes of this section, "capital asset" shall be defined in accordance with 11 CFR 9004.9(d)(1).

(2) *Other assets.* The candidate or committee shall maintain a list of other assets acquired for use in fundraising or as collateral for campaign loans, if the aggregate value of such assets exceeds $5000. The list shall include a brief description of each such asset, the fair market value of each asset, the method of disposition and the amount received in disposition. The fair market value of other assets shall be determined in accordance with 11 CFR 9004.9(d)(2).

§ 9003.6 Production of computer information.

(a) *Categories of computerized information to be provided.* If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the categories of data listed in paragraphs (a)(1) through (a)(9) of this section, the committee shall provide computerized magnetic media, such as magnetic tapes or magnetic diskettes, containing the computerized information at the times specified in 11 CFR 9007.1(b)(1):

(1) Information required by law to be maintained regarding the committee's receipts or disbursements;

(2) Receipts by and disbursements from a legal and accounting compliance fund under 11 CFR 9003.3(a), including the allocation of payroll and overhead expenditures;

(3) Receipts and disbursements under 11 CFR 9003.3 (b) or (c) to defray the costs of soliciting contributions or to defray the costs of legal and accounting services, including the allocation of payroll and overhead expenditures;

(4) Records relating to the costs of producing broadcast communications and purchasing airtime;

(5) Records used to prepare statements of net outstanding qualified campaign expenses;

(6) Records used to reconcile bank statements;

(7) Disbursements made and reimbursements received for the cost of transportation, ground services and facilities made available to media personnel, including records relating to how costs charged to media personnel were determined;

(8) Records relating to the acquisition, use and disposition of capital assets or other assets; and

(9) Any other information that may be used during the Commission's audit to review the committee's receipts, disbursements, loans, debts, obligations, bank reconciliations or statements of net outstanding qualified campaign expenses.

(b) *Organization of computerized information and technical specifications.* The computerized magnetic media shall be prepared and delivered at the committee's expense and shall conform to the technical specifications, including file requirements, described in the Federal Election Commission's Computerized

Magnetic Media Requirements for Title 26 Candidates/Committees Receiving Federal Funding. The data contained in the computerized magnetic media provided to the Commission shall be organized in the order specified by the Computerized magnetic Media Requirements.

(c) *Additional materials and assistance.* Upon request, the committee shall produce documentation explaining the computer system's software capabilities, such as user guides, technical manuals, formats, layouts and other materials for processing and analyzing the information requested. Upon request, the committee shall also make available such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the committee.

PART 9004—ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS; USE OF PAYMENTS

Sec.

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9004.10 Sale of assets acquired for fund-raising purposes.

Authority: 26 U.S.C. 9004 and 9009(b).

§ 9004.1 Major parties.

The eligible candidates of each major party in a Presidential election shall be entitled to equal payments under 11 CFR part 9005 in an amount which, in the aggregate, shall not exceed $20,000,000 as adjusted by the Consumer Price Index in the manner described in 11 CFR 110.9(c).

§ 9004.2 Pre-election payments for minor and new party candidates.

(a) *Candidate of a minor party in the preceding election.* An eligible candidate of a minor party is entitled to pre-election payments:

(1) If he or she received at least 5% of the total popular vote as the candidate of a minor party in the preceding election whether or not he or she is the same minor party's candidate in this election.

(2) In an amount which is equal, in the aggregate, to a proportionate share of the amount to which major party candidates are entitled under 11 CFR 9004.1.

The aggregate amount received by a minor party candidate shall bear the same ratio to the amount received by the major party candidates as the number of popular votes received by the minor party Presidential candidate in the preceding Presidential election bears to the average number of popular votes received by all major party candidates in that election.

(b) *Candidate of a minor party in the current election.* The eligible candidate of a minor party whose candidate for the office of President in the preceding election received at least 5% but less than 25% of the total popular vote is eligible to receive pre-election payments. The amount which a minor party candidate is entitled to receive under this section shall be computed pursuant to 11 CFR 9004.2(a) based on the number of popular votes received by the minor party's candidate in the preceding Presidential election; however, the amount to which the minor party candidate is entitled under this section shall be reduced by the amount to which the minor party's Presidential candidate in this election is entitled under 11 CFR 9004.2(a), if any.

(c) *New party candidate.* A candidate of a new party who was a candidate for the office of President in at least 10 States in the preceding election may be eligible to receive pre-election payments if he or she received at least 5% but less than 25% of the total popular vote in the preceding election. The amount which a new party candidate is entitled to receive under this section shall be computed pursuant to 11 CFR 9004.2(a) based on the number of popular votes received by the new party candidate in the preceding election. If a new party candidate is entitled to payments under this section, the amount of the entitlement shall be reduced by the amount to which the candidate is entitled under 11 CFR 9004.2(a), if any.

§ 9004.3 Post-election payments.

(a) *Minor and new party candidates.* Eligible candidates of a minor party or of a new party who, as candidates, receive 5 percent or more of the total number of popular votes cast for the office of President in the election shall be entitled to payments under 11 CFR part 9005 equal, in the aggregate, to a proportionate share of the amount allowed for major party candidates under 11 CFR 9004.1. The amount to which a minor or new party candidate is entitled shall bear the same ratio to the amount received by the major party candidates as the number of popular votes received by the minor or new party candidate in the Presidential election bears to the average number of popular votes received by the major party candidates for President in that election.

(b) *Amount of entitlement.* The aggregate payments to which an eligible candidate shall be entitled shall not exceed an amount equal to the lower of:

(1) The amount of qualified campaign expenses incurred by such eligible candidate and his or her authorized committee(s), reduced by the amount of contributions which are received to defray qualified campaign expenses by such eligible candidate and such committee(s); or

(2) The aggregate payments to which the eligible candidates of a major party are entitled under 11 CFR 9004.1, reduced by the amount of contributions received by such eligible candidates and their authorized committees to defray qualified campaign expenses in the case of a deficiency in the Fund.

(c) *Amount of entitlement limited by pre-election payment.* If an eligible candidate is entitled to payment under 11 CFR 9004.2, the amount allowable to that candidate under this section shall also be limited to the amount, if any, by which the entitlement under 11 CFR 9004.3(a) exceeds the amount of the entitlement under 11 CFR 9004.2.

§ 9004.4 Use of payments.

(a) *Qualified campaign expenses.* An eligible candidate shall use payments received under 11 CFR part 9005 only for the following purposes:

(1) A candidate may use such payments to defray qualified campaign expenses;

(2) A candidate may use such payments to repay loans that meet the requirements of 11 CFR 100.7(a)(1) or 100.7(b)(11) or to otherwise restore funds (other than contributions received pursuant to 11 CFR 9003.3(b) and expended to defray qualified campaign expenses) used to defray qualified campaign expenses;

(3) A candidate may use such payments to restore funds expended in accordance with 11 CFR 9003.4 for qualified campaign expenses incurred by the candidate prior to the beginning of the expenditure report period.

(4) *Winding down costs.* The following costs shall be considered qualified campaign expenses:

(i) Costs associated with the termination of the candidate's general election campaign such as complying with the post-election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including

office space rental, staff salaries and office supplies; or

(ii) Costs incurred by the candidate prior to the end of the expenditure report period for which written arrangement or commitment was made on or before the close of the expenditure report period.

(b) *Non-qualified campaign expenses*—(1) *General.* The following are examples of disbursements that are not qualified campaign expenses.

(2) *Excessive expenditures.* An expenditure which is in excess of any of the limitations under 11 CFR 9003.2 shall not be considered a qualified campaign expense. The Commission will calculate the amount of expenditures attributable to these limitations using the full amounts originally charged for goods and services rendered to the committee and not the amounts for which such obligations were later settled and paid, unless the committee can demonstrate that the lower amount paid reflects a reasonable settlement of a bona fide dispute with the creditor.

(3) *Expenditures incurred after the close of the expenditure report period.* Any expenditures incurred after the close of the expenditure report period, as defined in 11 CFR 9002.12, are not qualified campaign expenses except to the extent permitted under 11 CFR 9004.4(a)(4).

(4) *Civil or criminal penalties.* Civil or criminal penalties paid pursuant to the Federal Election Campaign Act are not qualified campaign expenses and cannot be defrayed from payments received under 11 CFR part 9005. Penalties may be paid from contributions in the candidate's legal and accounting compliance fund, in accordance with 11 CFR 9003.3(a)(2)(i)(C). Additional amounts may be received and expended to pay such penalties, if necessary. These funds shall not be considered contributions or expenditures but all amounts so received shall be subject to the prohibitions of the Act. Amounts received and expended under this section shall be reported in accordance with 11 CFR part 104.

(5) *Solicitation expenses.* Any expenses incurred by a major party candidate to solicit contributions to a legal and accounting compliance fund established pursuant to 11 CFR 9003.3(a) are not qualified campaign expenses and cannot be defrayed from payments received under 11 CFR part 9005.

(6) *Payments to candidate.* Payments made to the candidate by his or her committee, other than to reimburse funds advanced by the candidate for qualified campaign expenses, are not qualified campaign expenses.

(7) *Payments to other authorized committees.* Payments, including transfers, contributions and loans, to other committees authorized by the same candidate for a different election are not qualified campaign expenses.

(c) *Repayments.* Repayments may be made only from the following sources: Personal funds of the candidate (without regard to the limitations of 11 CFR 9003.2(c)), contributions and federal funds in the committee's account(s), and any additional funds raised subject to the limitations and prohibitions of the Federal Election Campaign Act of 1971, as amended.

§ 9004.5 Investment of public funds.

Investment of public funds or any other use of public funds to generate income is permissible, provided that an amount equal to all net income derived from such investments, less Federal, States and local taxes paid on such income, shall be repaid to the Secretary. Any net loss resulting from the investment of public funds will be considered a non-qualified campaign expense and an amount equal to the amount of such net loss shall be repaid to the United States Treasury as provided under 11 CFR 9007.2(b)(2)(i).

§ 9004.6 Reimbursements for transportation and services made available to media personnel.

(a) If an authorized committee incurs expenditures for transportation, ground services and facilities (including air travel, ground transportation, housing, meals, telephone service, typewriters) made available to media personnel, Secret Service personnel or national security staff, such expenditures will be considered qualified campaign expenses subject to the overall expenditure limitations of 11 CFR 9003.2(a)(1) and (b)(1).

(b) If reimbursement for such expenditures is received by a committee, the amount of such reimbursement for each media representative shall not exceed either: The media representative's pro rata share of the actual cost of the transportation and services made available; or a reasonable estimate of the media representative's pro rata share of the actual cost of the transportation and services made available. A media representative's pro rata share shall be calculated by dividing the total cost of the transportation and services by the total number of individuals to whom such transportation and services are made available. For purposes of this calculation, the total number of individuals shall include campaign staff, media personnel, Secret Service personnel, national security staff and any other individuals to whom such transportation and services are made available. The total amount of reimbursements received from a media representative under this section shall not exceed the actual pro rata cost of the transportation and services made available to that media representative by more than 10%.

(c) The total amount paid by an authorized committee for the cost of transportation or for ground services and facilities shall be reported as an expenditure in accordance with 11 CFR 104.3(b)(2)(i). Any reimbursement received by such committee for transportation or ground services and facilities shall be reported in accordance with 11 CFR 104.3(a)(3)(ix).

(d)(1) The committee may deduct from the amount of expenditures subject to the overall expenditure limitation of 11 CFR 9003.2(a)(1) and (b)(1) the amount of reimbursements received in payment for the actual cost of transportation and services described in paragraph (a) of this section. This deduction shall not exceed the amount the committee expended for the actual cost of transportation and services provided. The committee may also deduct from the overall expenditure limitation an additional amount of reimbursement received equal to 3% of the actual cost of transportation and services provided under this section as the administrative cost to the committee of providing such services and seeking reimbursement for them. If the committee has incurred higher administrative costs in providing these services, the committee must document the total cost incurred for such services in order to deduct a higher amount of reimbursements received from the overall expenditure limitation. Amounts reimbursed that exceed the amount actually paid by the committee for transportation and services provided under paragraph (a) plus the amount of administrative costs permitted by this section up to the maximum amount that may be received under paragraph (b) shall be repaid to the Treasury. Amounts paid by the committee for transportation, services and administrative costs for which no reimbursement is received will be considered qualified campaign expenses subject to the overall expenditure limitation in accordance with paragraph (a).

(2) For the purposes of this section, "administrative costs" shall include all costs incurred by the committee for making travel arrangements and for seeking reimbursements, whether

performed by committee staff or independent contractors.

§ 9004.7 Allocation of travel expenditures.

(a) Notwithstanding the provisions of 11 CFR part 106, expenditures for travel relating to a Presidential or Vice Presidential candidate's campaign by any individual, including a candidate, shall, pursuant to the provisions of 11 CFR 9004.7(b), be qualified campaign expenses and be reported by the candidate's authorized committee(s) as expenditures.

(b) (1) For a trip which is entirely campaign-related, the total cost of the trip shall be a qualified campaign expense and a reportable expenditure.

(2) For a trip which includes campaign-related and non-campaign related stops, that portion of the cost of the trip allocable to campaign activity shall be a qualified campaign expense and a reportable expenditure. Such portion shall be determined by calculating what the trip would have cost from the point of origin of the trip to the first campaign-related stop and from the stop through each subsequent campaign-related stop to the point of origin. If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related.

(3) For each trip, an itinerary shall be prepared and such itinerary shall be made available for Commission inspection.

(4) For trips by government conveyance or by charter, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign-related, shall be made available for Commission inspection.

(5) If any individual, including a candidate, uses government conveyance or accommodations paid for by a government entity for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to:

(i) The first class commercial air fare plus the cost of other services, in the case of travel to a city served by a regularly scheduled commercial service; or

(ii) The commercial charter rate plus the cost of other services, in the case of travel to a city not served by a regularly scheduled commercial service.

(6) Travel expenses of a candidate's spouse and family when accompanying the candidate on campaign-related travel may be treated as qualified campaign expenses and reportable expenditures. If the spouse or family members conduct campaign-related activities, their travel expenses shall be qualified campaign expenses and reportable expenditures.

(7) If any individual, including a candidate, incurs expenses for campaign-related travel, other than by use of government conveyance or accommodations, an amount equal to that portion of the actual cost of the conveyance or accommodations which is allocable to all passengers, including the candidate, traveling for campaign purposes shall be qualified campaign expense and shall be reported by the committee as an expenditure.

(i) If the trip is by charter, the actual cost for each passenger shall be determined by dividing the total operating cost for the charter by the total number of passengers transported. The amount which is a qualified campaign expense and a reportable expenditure shall be calculated in accordance with the formula set forth at 11 CFR 9004.7(b)(2) on the basis of the actual cost per passenger multiplied by the number of passengers traveling for campaign purposes.

(ii) If the trip is by non-charter commercial transportation, the actual cost shall be calculated in accordance with the formula set forth at 11 CFR 9004.7(b)(2) on the basis of the commercial fare. Such actual cost shall be a qualified campaign expense and a reportable expenditure.

§ 9004.8 Withdrawal by candidate.

(a) Any individual who is not actively conducting campaigns in more than one State for the office of President or Vice President shall cease to be a candidate under 11 CFR 9002.2.

(b) An individual who ceases to be a candidate under this section shall:

(1) No longer be eligible to receive any payments under 11 CFR 9005.2 except to defray qualified campaign expenses as provided in 11 CFR 9004.4.

(2) Submit a statement, within 30 calendar days after he or she ceases to be a candidate, setting forth the information required under 11 CFR 9004.9(c).

§ 9004.9 Net outstanding qualified campaign expenses.

(a) *Candidates receiving post-election funding.* A candidate who is eligible to receive post-election payments under 11 CFR 9004.3 shall file, no later than 20 calendar days after the date of the election, a preliminary statement of that candidate's net outstanding qualified campaign expenses. The candidate's net outstanding qualified campaign expenses under this section equal the difference between 11 CFR 9004.9(a) (1) and (2).

(1) The total of:

(i) All outstanding obligations for qualified campaign expenses as of the date of the election; plus

(ii) An estimate of the amount of qualified campaign expenses that will be incurred by the end of the expenditure report period; plus

(iii) An estimate of necessary winding down costs as defined under 11 CFR 9004.4(a)(4); less

(2) The total of:

(i) Cash on hand as of the close of business on the day of the election, including: All contributions dated on or before that date; currency; balances on deposit in banks, savings and loan institutions, and other depository institutions; traveler's checks; certificates of deposit; treasury bills; and any other committee investments valued at fair market value;

(ii) The fair market value of capital assets and other assets on hand; and

(iii) Amounts owed to the candidate's authorized committee(s) in the form of credits, refunds of deposits, returns, receivables, or rebates of qualified campaign expenses; or a commercially reasonable amount based on the collectibility of those credits, returns, receivables or rebates.

(3) The amount submitted as the total of outstanding campaign obligations under paragraph (a)(1) of this section shall not include any accounts payable for non-qualified campaign expenses nor any amounts determined or anticipated to be required as a repayment under 11 CFR part 9007 or any amounts paid to secure a surety bond under 11 CFR 9007.5(c).

(b) *All candidates.* Each candidate, except for individuals who have withdrawn pursuant to 11 CFR 9004.8, shall submit a statement of net outstanding qualified campaign expenses no later than 30 calendar days after the end of the expenditure report period. The statement shall contain the information required by 11 CFR 9004.9(a)(1) and (2), except that the amount of outstanding obligations under 11 CFR 9004.9(a)(1)(i) and the amount of cash on hand, assets and receivables under 11 CFR 9004.9(a)(2) shall be complete as of the last day of the expenditure report period.

(c) *Candidates who withdraw.* An individual who ceases to be a candidate pursuant to 11 CFR 9004.8 shall file a statement of net outstanding qualified campaign expenses no later than 30 calendar days after he or she ceases to be a candidate. The statement shall contain the information required under 11 CFR 9004.9(a) (1) and (2), except that the amount of outstanding obligations under 11 CFR 9004.9(a)(1)(i) and the

amount of cash on hand, assets and receivables under 11 CFR 9004.9(a)(2) shall be complete as of the day on which the individual ceased to be a candidate.

(d)(1) *Capital assets.* For purposes of this section, the term "capital asset" means any property used in the operation of the campaign whose purchase price exceeded $2000 when acquired by the committee. Property that must be valued as capital assets under this section includes, but is not limited to, office equipment, furniture, vehicles and fixtures acquired for use in the operation of the candidate's campaign, but does not include property defined as "other assets" under 11 CFR 9004.9(d)(2). A list of all capital assets shall be maintained by the committee in accordance with 11 CFR 9003.5(d)(1). The fair market value of capital assets may be considered to be the total original cost of such items when acquired less 40%, to account for depreciation, except that items acquired after the date of ineligibility must be valued at their fair market value on the date acquired. If the candidate wishes to claim a higher depreciation percentage for an item, he or she must list that capital asset on the statement separately and demonstrate, through documentation, the fair market value of each such asset.

(2) *Other assets.* The term "other assets" means any property acquired by the committee for use in raising funds or as collateral for campaign loans. "Other assets" must be included on the candidate's statement of net outstanding qualified campaign expenses if the aggregate value of such assets exceeds $5000. The value of "other assets" shall be determined by the fair market value of each item on the last day of the expenditure report period or the day on which the individual ceased to be a candidate, whichever is earlier, unless the item is acquired after these dates, in which case the item shall be valued on the date it is acquired. A list of other assets shall be maintained by the committee in accordance with 11 CFR 9003.5(d)(2).

(e) *Collectibility of accounts receivable.* If the committee determines that an account receivable of $500 or more, including any credit, refund, return or rebate, is not collectible in whole or in part, the committee shall demonstrate through documentation that the determination was commercially reasonable. The documentation shall include records showing the original amount of the account receivable, copies of correspondence and memoranda of communications with the debtor showing attempts to collect the amount due, and an explanation of how the lesser amount or full write-off was determined.

(f) *Review of candidate statement—* (1) *General.* The Commission will review the statement filed by each candidate under this section. The Commission may request further information with respect to statements filed pursuant to 11 CFR 9004.9(b) during the audit of that candidate's authorized committee(s) under 11 CFR part 9007.

(2) *Candidate eligible for post-election funding.* (i) If, in reviewing the preliminary statement of a candidate eligible to receive post-election funding, the Commission receives information indicating that substantial assets of that candidate's authorized committee(s) have been undervalued or not included in the statement or that the amount of outstanding qualified campaign expenses has been otherwise overstated in relation to committee assets, the Commission may decide to temporarily postpone its certification of funds to that candidate pending a final determination of whether the candidate is entitled to all or a portion of the funds for which he or she is eligible on the percentage of votes the candidate received in the general election.

(ii) *Initial determination.* In making a determination under 11 CFR 9004.9(f)(2)(i), the Commission will notify the candidate within 10 business days after its receipt of the statement of its initial determination that the candidate is not entitled to receive the full amount for which the candidate may be eligible. The notice will give the legal and factual reasons for the initial determination and advise the candidate of the evidence on which the Commission's initial determination is based. The candidate will be given the opportunity to revise the statement or to submit, within 10 business days, written legal or factual materials to demonstrate that the candidate has net outstanding qualified campaign expenses that entitle the candidate to post-election funds. Such materials may be submitted by counsel if the candidate so desires.

(iii) *Final determination.* The Commission will consider any written legal or factual materials submitted by the candidate before making its final determination. A final determination that the candidate is entitled to receive only a portion or no post-election funding will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the legal and factual reasons underlying the Commission's determination and will summarize the results of any investigation on which the determination is based.

(iv) If the candidate demonstrates that the amount of oustanding qualified campaign expenses still exceeds committee assets, the Commission will certify the payment of post-election funds to which the candidate is entitled.

(v) *Petitions for rehearing.* The candidate may file a petition for rehearing of a final determination under this section in accordance with 11 CFR 9007.5(a).

§ 9004.10 Sale of assets acquired for fundraising purposes.

(a) *General.* A minor or new party candidate may sell assets donated to the candidate's authorized committee(s) or otherwise acquired for fundraising purposes subject to the limitations and prohibitions of 11 CFR 9003.2, title 2, United States Code, and 11 CFR parts 110 and 114. This section will only apply to major party candidates to the extent that they sell assets acquired either for fundraising purposes in connection with his or her legal and accounting compliance fund or when it is necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b).

(b) *Sale after end of expenditure report period.* A minor or new party candidate, or a major party candidate in the event of a deficiency in the payments received from the Fund due to the application of 11 CFR 9005.2(b), whose outstanding debts exceed the cash on hand after the end of the expenditure report period as determined under 11 CFR 9002.12, may dispose of assets acquired for fundraising purposes in a sale to a wholesaler or other intermediary who will in turn sell such assets to the public provided that the sale to the wholesaler or intermediary is an arms-length transaction. Sales made under this subsection will not be subject to the limitations and prohibitions of title 2, United States Code and 11 CFR parts 110 and 114.

PART 9005—CERTIFICATION BY COMMISSION

Sec.

9005.1 Certification of payments for candidates.
9005.2 Payments to eligible candidates from the fund.

Authority: 26 U.S.C. 9005 and 9009(b).

§ 9005.1 Certification of payments for candidates.

(a) *Certification of payments for major party candidates.* Not later than 10 days after the Commission determines that the Presidential and

Vice Presidential candidates of a major party have met all applicable conditions for eligibility to receive payments under 11 CFR 9003.1 and 9003.2, the Commission shall certify to the Secretary that payment in full of the amounts to which such candidates are entitled under 11 CFR part 9004 should be made pursuant to 11 CFR 9005.2.

(b) *Certification of pre-election payments for minor and new party candidates.* (1) Not later than 10 days after a minor or new party candidate has met all applicable conditions for eligibility to receive payments under 11 CFR 9003.1, 9003.2 and 9004.2, the Commission will make an initial determination of the amount, if any, to which the candidate is entitled. The Commission will base its determination on the percentage of votes received in the official vote count certified in each State. In notifying the candidate, the Commission will give the legal and factual reasons for its determination and advise the candidate of the evidence on which the determination is based.

(2) The candidate may submit, within 15 days after the Commission's initial determination, written legal or factual materials to demonstrate that a redetermination is appropriate. Such materials may be submitted by counsel if the candidate so desires.

(3) The Commission will consider any written legal or factual materials timely submitted by the candidate in making its final determination. A final determination of certification by the Commission will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation on which the determination is based.

(c) *Certification of minor and new party candidates for post-election payments.* (1) Not later than 30 days after the general election, the Commission will determine whether a minor or new party candidate is eligible for post-election payments.

(2) The Commission's determination of eligibility will be based on the following factors:

(i) The candidate has received at least 5% or more of the total popular vote based on unofficial vote results in each State;

(ii) The candidate has filed a preliminary statement of his or her net outstanding qualified campaign expenses pursuant to 11 CFR 9004.9(a); and

(iii) The candidate has met all applicable conditions for eligibility under 11 CFR 9003.1 and 9003.2.

(3) The Commission will notify the candiate of its initial determination of the amount, if any, to which the candidate is entitled, give the legal and factual reasons for its determination and advise the candidate of the evidence on which the determination is based. The Commission will also notify the candidate that it will deduct a percentage of the amount to which the candidate is entitled based on the unofficial vote results when the Commission certifies an amount for payment to the Secretary. This deduction will be based on the average percentage differential between the unofficial and official vote results for all candidates who received public funds in the preceding Presidential general election.

(4) The candidate may submit within 15 days after the Commission's initial determination written legal or factual materials to demonstrate that a redetermination is appropriate. Such materials may be submitted by counsel if the candidate so desires.

(5) The Commission will consider any written legal or factual materials timely submitted by the candidate in making its final determination. A final determination of certification by the Commission will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation on which the determination is based.

(d) All certifications made by the Commission pursuant to this section shall be final and conclusive, except to the extent that they are subject to examination and audit by the Commission under 11 CFR part 9007 and judicial review under 26 U.S.C. 9011.

§ 9005.2 Payments to eligible candidates from the fund.

(a) Upon receipt of a certification from the Commission under 11 CFR 9005.1 for payment to the eligible Presidential and Vice Presidential candidates of a political party, the Secretary shall pay to such candidates out of the Fund the amount certified by the Commission. Amounts paid to a candidate shall be under the control of that candidate.

(b)(1) If at the time of a certification from the Commission under 11 CFR 9005.1, the Secretary determines that the monies in the Fund are not, or may not be, sufficient to satisfy the full entitlements of the eligible candidates of all political parties, he or she shall withhold an amount which is determined to be necessary to assure that the eligible candidates of each political party will receive their pro rata share.

(2) Amounts withheld under 11 CFR 9005.2(b)(1) shall be paid when the Secretary determines that there are sufficient monies in the Fund to pay such amounts, or pro rata portions thereof, to all eligible candidates from whom amounts have been withheld.

(c) Payments received from the Fund by a major party candidate shall be deposited in a separate account maintained by his or her authorized committee, unless there is a deficiency in the Fund as provided under 11 CFR 9005.2(b)(1). In the case of a deficiency, the candidate may establish a separate account for payments from the Fund or may deposit such payments with contributions received pursuant to 11 CFR 9003.3(b). The account(s) shall be maintained at a State bank, federally chartered depository institution or other depository institution, the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(d) No funds other than the payments received from the Treasury, reimbursements, or income generated through use of public funds in accordance with 11 CFR 9004.5, shall be deposited in the account described in 11 CFR 9005.2(c). "Reimbursements" shall include, but are not limited to, refunds of deposits, vendor refunds, reimbursements for travel expenses under 11 CFR 9004.6 and 9004.7 and reimbursements for legal and accounting costs under 11 CFR 9003.3(a)(2)(ii)(B).

PART 9006—REPORTS AND RECORDKEEPING

Sec.

9006.1 Separate reports.
9006.2 Filing dates.

Authority: 26 U.S.C. 9006 and 9009(b).

§ 9006.1 Separate reports.

(a) The authorized committee(s) of a candidate shall report all expenditures to further the candidate's general election campaign in reports separate from reports of any other expenditures made by such committee(s) with respect to other elections. Such reports shall be filed pursuant to the requirements of 11 CFR part 104.

(b) The authorized committee(s) of a candidate shall file separate reports as follows:

(1) One report shall be filed which lists all receipts and disbursements of:

(i) Contributions and loans received by a major party candidate pursuant to 11 CFR part 9003 to make up

deficiencies in Fund payments due to the application of 11 CFR part 9005;

(ii) Contributions and loans received pursuant to 11 CFR 9003.2(b)(2) by a minor, or new party for use in the general election;

(iii) Receipts for expenses incurred before the beginning of the expenditure report period pursuant to 11 CFR 9003.4;

(iv) Personal funds expended in accordance with 11 CFR 9003.2(c); and

(v) Payments received from the Fund.

(2) A second report shall be filed which lists all receipts of and disbursements from, contributions received for the candidate's legal and accounting compliance fund in accordance with 11 CFR 9003.3(a).

§ 9006.2 Filing dates.

The reports required to be filed under 11 CFR 9006.1 shall be filed during an election year on a monthly or quarterly basis as prescribed at 11 CFR 104.5(b)(1). During a non-election year, the candidate's principal campaign committee may elect to file reports either on a monthly or quarterly basis in accordance with 11 CFR 104.5(b)(2).

PART 9007—EXAMINATIONS AND AUDITS; REPAYMENTS

Sec.

9007.1 Audits.
9007.2 Repayments.
9007.3 Extensions of time.
9007.4 Additional audits.
9007.5 Petitions for rehearing; stays of repayment determinations.
9007.6 State-dated committee checks.

Authority: 26 U.S.C. 9007 and 9009(b).

§ 9007.1 Audits.

(a) *General.* (1) After each Presidential election, the Commission will conduct a thorough examination and audit of the receipts, disbursements, debts and obligations of each candidate, his or her authorized committee(s), and agents of such candidates or committees. Such examination and audit will include, but will not be limited to, expenditures pursuant to 11 CFR 9003.4 prior to the beginning of the expenditure report period, contributions to and expenditures made from the legal and accounting compliance fund established under 11 CFR 9003.3(a), contributions received to supplement any payments received from the Fund, and qualified campaign expenses.

(2) In addition, the Commission may conduct other examinations and audits from time to time as it deems necessary to carry out the provisions of this subchapter.

(3) Information obtained pursuant to any audit and examination conducted under 11 CFR 9007.1(a) (1) and (2) may be used by the Commission as the basis, or partial basis, for its repayment determinations under 11 CFR 9007.2.

(b) *Conduct of fieldwork.* (1) If the candidate or the candidate's authorized committee does not maintain or use any computerized information containing the data listed in 11 CFR 9003.6, the Commission will give the candidate's authorized committee at least two weeks' notice of the Commission's intention to commence fieldwork on the audit and examination. The fieldwork shall be conducted at a site provided by the committee. If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the data listed in 11 CFR 9003.6, the Commission generally will request such information prior to commencement of audit fieldwork. Such request will be made in writing. The committee shall produce the computerized information no later than 15 calendar days after service of such request. Upon receipt of the computerized information requested and compliance with the technical specifications of 11 CFR 9003.6(b), the Commission will give the candidate's authorized committee at least two weeks' notice of the Commission's intention to commence fieldwork on the audit and examination. The fieldwork shall be conducted at a site provided by the committee. During or after audit fieldwork, the Commission may request additional or updated computerized information which expands the coverage dates of computerized information previously provided, and which may be used for purposes including, but not limited to, updating a statement of net outstanding qualified campaign expenses. During or after audit fieldwork, the Commission may also request additional computerized information which was created by or becomes available to the committee that is of assistance in the Commission's audit. The committee shall produce the additional or updated computerized information no later than 15 calendar days after service of the Commission's request.

(i) *Office space and records.* On the date scheduled for the commencement of fieldwork, the candidate or his or her authorized committee(s) shall provide Commission staff with office space and committee records in accordance with the candidate and committee agreement under 11 CFR 9003.1(b)(6).

(ii) *Availability of committee personnel.* On the date scheduled for the commencement of fieldwork, the candidate or his or her authorized committee(s) shall have committee personnel present at the site of the fieldwork. Such personnel shall be familiar with the committee's records and operation and shall be available to Commission staff to answer questions and to aid in locating records.

(iii) *Failure to provide staff, records or office space.* If the candidate or his or her authorized committee(s) fail to provide adequate office space, personnel or committee records, the Commission may seek judicial intervention under 2 U.S.C. 437d or 26 U.S.C. 9010(c) to enforce the candidate and committee agreement made under 11 CFR 9003.1(b). Before seeking judicial intervention, the Commission will notify the candidate of his or her failure to comply with the agreement and will recommend corrective action to bring the candidate into compliance. Upon receipt of the Commission's notification, the candidate will have ten (10) calendar days in which to take the corrective action indicated or to otherwise demonstrate to the Commission in writing that he or she is complying with the candidate and committee agreements.

(iv) If, in the course of the audit process, a dispute arises over the documentation sought or other requirements of the candidate agreement, the candidate may seek review by the Commission of the issues raised. To seek review, the candidate shall submit a written statement within 10 days after the disputed Commission staff request is made, describing the dispute and indicating the candidate's proposed alternative(s).

(v) If the candidate or his or her authorized committee fails to produce particular records, materials, evidence or other information requested by the Commission, the Commission may issue an order pursuant to 11 CFR 111.11 or a subpoena or subpoena duces tecum pursuant to 11 CFR 111.12. The procedures set forth in 11 CFR 111.11 through 111.15, as appropriate, shall apply to the production of such records, materials, evidence or other information as specified in the order, subpoena or subpoena duces tecum.

(2) Fieldwork will include the following steps designed to keep the candidate and committee informed as to the progress of the audit and to expedite the process:

(i) *Entrance conference.* At the outset of the fieldwork, Commission staff will hold an entrance conference, at which the candidate's representatives will be advised of the purpose of the audit and the general procedures to be followed. Future requirements of the candidate and his or her authorized committee, such as possible repayments to the

United States Treasury, will also be discussed. Committee representatives shall provide information and records necessary to conduct the audit, and Commission staff will be available to answer committee questions.

(ii) *Review of records.* During the fieldwork, Commission staff will review committee records and may conduct interviews of committee personnel. Commission staff will be available to explain aspects of the audit and examination as it progresses. Additional meetings between Commission staff and committee personnel may be held from time to time during the fieldwork to discuss possible audit findings and to resolve issues arising during the course of the audit.

(iii) *Exit conference.* At the conclusion of the fieldwork, Commission staff will hold an exit conference to discuss with committee representatives the staff's preliminary findings and recommendations which the Commission staff anticipates that it may present to the Commission for approval. Commission staff will advise committee representatives at this conference of the projected timetable regarding the issuance of an audit report, the committee's opportunity to respond thereto, and the Commission's initial and final repayment determinations under 11 CFR 9007.2.

(3) Commission staff may conduct additional fieldwork after the completion of the fieldwork conducted pursuant to 11 CFR 9007.1(b) (1) and (2). Factors that may necessitate such follow-up fieldwork include, but are not limited to, the following:

(i) Committee response to audit findings;

(ii) Financial activity of the committee subsequent to the fieldwork conducted pursuant to 11 CFR 9007.1(b)(1);

(iii) Committee responses to Commission repayment determinations made under 11 CFR 9007.2.

(4) The Commission will notify the candidate and his or her authorized committee if follow-up fieldwork is necessary. The provisions of 11 CFR 9007.1(b) (1) and (2) will apply to any additional fieldwork conducted.

(c) *Preparation of interim audit report.* (1) After the completion of the fieldwork conducted pursuant to 11 CFR 9007.1(b)(1), the Commission will issue an interim audit report to the candidate and his or her authorized committee. The interim audit report may contain Commission findings and recommendations regarding one or more of the following areas:

(i) An evaluation of procedures and systems employed by the candidate and committee to comply with applicable provisions of the Federal Election Campaign Act, Presidential Election Campaign Fund Act and Commission regulations;

(ii) Accuracy of statements and reports filed with the Commission by the candidate and committee;

(iii) Compliance of the candidate and committee with applicable statutory and regulatory provisions in those instances where the Commission has not instituted any enforcement action on the matter(s) under the provisions of 2 U.S.C. 437g and 11 CFR part 111; and

(iv) Preliminary calculations regarding future repayments to the United States Treasury.

(2) The candidate and his or her authorized committee will have an opportunity to submit in writing within 30 calendar days of service of the interim report, legal and factual materials disputing or commenting on the contents of the interim report. Such materials may be submitted by counsel if the candidate so desires.

(3) The Commission will consider any written legal and factual materials submitted by the candidate or his or her authorized committee in accordance with 11 CFR 9007.1(c)(2) before approving and issuing an audit report to be released to the public. The contents of the publicly-released audit report may differ from that of the interim report since the Commission will consider timely submissions of legal and factual materials by the candidate or committee in response to the interim report.

(d) *Preparation of publicly-released audit report.* An audit report prepared subsequent to an interim report will be publicly released pursuant to 11 CFR 9007.1(e). This report will contain Commission findings and recommendations addressed in the interim audit report but may contain adjustments based on the candidate's response to the interim report. In addition, this report will contain an initial repayment determination made by the Commission pursuant to 11 CFR 9007.2(c)(1) in lieu of the preliminary calculations set forth in the interim report.

(e) *Public release of audit report.* (1) After the candidate and committee have had an opportunity to respond to a written interim report of the Commission, the Commission will make public the audit report prepared subsequent to the interim report, as provided in 11 CFR 9007.1(d).

(2) If the Commission determines, on the basis of information obtained under the audit and examination process, that certain matters warrant enforcement under 2 U.S.C. 437g and 11 CFR part 111, those matters will not be contained in the publicly-released report. In such cases, the audit report will indicate that certain other matters have been referred to the Commission's Office of General Counsel.

(3) The Commission will provide the candidate and the committee with copies of the agenda document containing those portions of the final audit report to be considered in open session 24 hours prior to releasing the agenda document to the public. The Commission will also provide the candidate and committee with copies of the final audit report 24 hours before releasing the report to the public.

(4) Addenda to the audit report may be issued from time to time as circumstances warrant and as additional information becomes available. Such addenda may be based in part on follow-up fieldwork conducted under 11 CFR 9007.1(b)(3) and will be placed on the public record.

§ 9007.2 Repayments.

(a) *General.* (1) A candidate who has received payments from the Fund under 11 CFR part 9005 shall pay the United States Treasury any amounts which the Commission determines to be repayable under this section. In making repayment determinations under this section, the Commission may utilize information obtained from audits and examinations conducted pursuant to 11 CFR 9007.1 or otherwise obtained by the Commission in carrying out its responsibilities under this subchapter.

(2) The Commission will notify the candidate of any repayment determinations made under this section as soon as possible, but not later than 3 years after the close of the expenditure report period. The Commission's written notice of its preliminary calculations regarding future repayments under 11 CFR 9007.1(c) will constitute notification for purposes of the 3 year period. If the candidate or committee fails to provide records that the Commission determines are necessary to make a repayment determination, the Commission may notify the candidate that the running of the 3 year period will be suspended until the Commission receives the records.

(3) Once the candidate receives notice of the Commission's final repayment determination under this section, the candidate should give preference to the repayment over all other outstanding obligations of his or her committee, except for any federal taxes owed by the committee.

(b) *Bases for repayment.* The Commission may determine that an eligible candidate of a political party who has received payments from the

Fund must repay the United States Treasury under any of the circumstances described below.

(1) *Payments in excess of candidate's entitlement.* If the Commission determines that any portion of the payments made to the candidate was in excess of the aggregate payments to which such candidate was entitled, it will so notify the candidate, and such candidate shall pay to the United States Treasury an amount equal to such portion.

(2) *Use of funds for non-qualified campaign expenses.* (i) If the Commission determines that any amount of any payment to an eligible candidate from the Fund was used for purposes other than those described in paragraphs (b)(2)(i) (A) through (C) of this section, it will notify the candidate of the amount so used, and such candidate shall pay to the United States Treasury an amount equal to such amount.

(A) To defray qualified campaign expenses;

(B) To repay loans, the proceeds of which were used to defray qualified campaign expenses; and

(C) To restore funds (other than contributions which were received and expended by minor or new party candidates to defray qualified campaign expenses) which were used to defray qualified campaign expenses.

(ii) Examples of Commission repayment determinations under 11 CFR 9007.2(b)(2) include, but are not limited to the following:

(A) Determinations that a candidate, a candidate's authorized committee(s) or agent(s) have incurred expenses in excess of the aggregate payments to which an eligible major party candidate is entitled;

(B) Determinations that amounts spent by a candidate, a candidate's authorized committee(s) or agent(s) from the Fund were not documented in accordance with 11 CFR 9003.5;

(C) Determinations that any portion of the payments made to a candidate from the Fund was expended in violation of State or Federal law; and

(D) Determinations that any portion of the payments made to a candidate from the Fund was used to defray expenses resulting from a violation of State or Federal law, such as the payment of fines or penalties.

(iii) In the case of a candidate who has received contributions pursuant to 11 CFR 9003.3 (b) or (c), the amount of any repayment sought under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of payments certified to the candidate from the Fund bears to the total deposits, as of December 31 of the Presidential election year. For purposes of this section, total deposits means all deposits to all candidate accounts minus transfers between accounts, refunds, rebates, reimbursements, checks returned for insufficient funds, proceeds of loans and other similar amounts.

(3) *Surplus.* If the Commission determines that a portion of payments from the Fund remains unspent after all qualified campaign expenses have been paid, it shall so notify the candidate, and such candidate shall pay the United States Treasury that portion of surplus funds.

(4) *Income on investment of payments from the Fund.* If the Commission determines that a candidate received any income as a result of investment or other use of payments from the Fund pursuant to 11 CFR 9004.5, it shall so notify the candidate and such candidate shall pay to the United States Treasury an amount equal to the amount determined to be income, less any Federal, State or local taxes on such income.

(5) *Unlawful acceptance of contributions by an eligible candidate of a major party.* If the Commission determines that an eligible candidate of a major party, the candidate's authorized committee(s) or agent(s) accepted contributions to defray qualified campaign expenses (other than contributions to make up deficiencies in payments from the Fund, or to defray expenses incurred for legal and accounting services in accordance with 11 CFR 9003.3(a)), it shall notify the candidate of the amount of contributions so accepted, and the candidate shall pay to the United States Treasury an amount equal to such amount.

(c) *Repayment determination procedures.* The Commission repayment determination will be made in accordance with the procedures set forth at 11 CFR 9007.2 (c)(1) through (c)(4).

(1) *Initial determination.* The Commission will provide the candidate with a written notice of its initial repayment determination(s). This notice will be included in the Commission's publicly-released audit report pursuant to 11 CFR 9007.1(d) and will set forth the legal and factual reasons for such determination(s). Such notice will also advise the candidate of the evidence upon which any such determination is based. If the candidate does not dispute an initial repayment determination of the Commission within 30 calendar days after service of the notice, such initial determination will be considered a final determination of the Commission.

(2) *Submission of written materials.* If the candidate disputes the Commission's initial repayment determination(s), he or she shall have an opportunity to submit in writing, within 30 calendar days after service of the Commission's notice, legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. The Commission will consider any written legal and factual materials submitted by the candidate within this 30 day period in making its final repayment determination(s). Such materials may be submitted by counsel if the candidate so desires.

(3) *Oral presentation.* A candidate who has submitted written materials under 11 CFR 9007.2(c)(2) may request that the Commission provide such candidate with an opportunity to address the Commission in open session. If the Commission decides by an affirmative vote of four (4) of its members to grant the candidate's request, it will inform the candidate of the date and time set for the oral presentation. At the date and time set by the Commission, the candidate or candidate's designated representative will be allotted an amount of time in which to make an oral presentation to the Commission based upon the legal and factual materials submitted under 11 CFR 9007.2(c)(2). The candidate or representative will also have the opportunity to answer any questions from individual members of the Commission.

(4) *Final determination.* In making its final repayment determination(s), the Commission will consider any submission made under 11 CFR 9007.2(c)(2) and any oral presentation made under 11 CFR 9007.2(c)(3). A final determination that a candidate must repay a certain amount will be accompanied by a written statement of reasons for the Commission's actions. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation upon which the determination is based.

(d) *Repayment period.* (1) Within 90 calendar days of service of the notice of the Commission's initial repayment determination(s), the candidate shall repay to the United States Treasury amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(2) If the candidate submits written materials under 11 CFR 9007.2(c)(2) disputing the Commission's initial

repayment determination(s), the time for repayment will be suspended until the Commission makes its final repayment determination(s). Within 30 calendar days after service of the notice of the Commission's final repayment determination(s), the candidate shall repay to the United States Treasury amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(e) *Computation of time.* The time periods established by this section shall be computed in accordance with 11 CFR 111.2.

(f) *Additional repayments.* Nothing in this section will prevent the Commission from making additional repayment determinations on one or more of the bases set forth at 11 CFR 9007.2(b) after it has made a final determination on any such basis. The Commission may make additional repayment determinations where there exist facts not used as the basis for a previous final determination. Any such additional repayment determination will be made in accordance with the provisions of this section.

(g) *Newly-discovered assets.* If, after any initial or final repayment determination made under this section, a candidate or his or her authorized committee(s) receives or becomes aware of assets not previously included in any statement of net outstanding qualified campaign expenses submitted pursuant to 11 CFR 9004.9, the candidate or his or her authorized committee(s) shall promptly notify the Commission of such newly-discovered assets. Newly-discovered assets may include refunds, rebates, late-arriving receivables, and actual receipts for capital assets in excess of the value specified in any previously-submitted statement of net outstanding qualified campaign expenses. Newly-discovered assets may serve as a basis for additional repayment determinations under 11 CFR 9007.2(f).

(h) *Limit on repayment.* No repayment shall be required from the eligible candidates of a political party under 11 CFR 9007.2 to the extent that such repayment, when added to other repayments required from such candidates under 11 CFR 9007.2, exceeds the amount of payments received by such candidates under 11 CFR 9005.3.

(i) *Petitions for rehearing; stays pending appeal.* The candidate may file a petition for rehearing of a final repayment determination in accordance with 11 CFR 9007.5(a). The candidate may request a stay of a final repayment determination in accordance with 11 CFR 9007.5(c) pending the candidate's appeal of that repayment determination.

§ 9007.3 Extensions of time.

(a) It is the policy of the Commission that extensions of time under 11 CFR part 9007 will not be routinely granted.

(b) Whenever a candidate has a right or is required to take action within a period of time prescribed by 11 CFR part 9007 or by notice given thereunder, the candidate may apply in writing to the Commission for an extension of time in which to exercise such right or take such action. The candidate shall demonstrate in the application for extension that good cause exists for his or her request.

(c) An application for extension of time shall be made at least 7 calendar days prior to the expiration of the time period for which the extension is sought. The Commission may, upon a showing of good cause, grant an extension of time to a candidate who has applied for such extension in a timely manner. The length of time of any extension granted hereunder shall be decided by the Commission and may be less than the amount of time sought by the candidate in his or her application.

(d) If a candidate fails to seek an extension of time, exercise a right or take a required action prior to the expiration of a time period prescribed by 11 CFR part 9007, the Commission may, on the candidate's showing of excusable neglect:

(1) Permit such candidate to exercise his or her right(s), or take such required action(s) after the expiration of the prescribed time period; and

(2) Take into consideration any information obtained in connection with the exercise of any such right or taking of any such action before making decisions or determinations under 11 CFR part 9007.

§ 9007.4 Additional audits.

In accordance with 11 CFR 104.16(c), the Commission, pursuant to 11 CFR 111.10, may upon affirmative vote of four members conduct an audit and field investigation of any committee in any case in which the Commission finds reason to believe that a violation of a statute or regulation over which the Commission has jurisdiction has occurred or is about to occur.

§ 9007.5 Petitions for rehearing; stays of repayment determinations.

(a) *Petitions for rehearing.* (1) Following the Commission's final repayment determination or a final determination that a candidate is not entitled to all or a portion of post-election funding under 11 CFR 9004.9(f), the candidate may file a petition for rehearing setting forth the relief desired and the legal and factual basis in support. To be considered by the Commission, petitions for rehearing must:

(i) Be filed within 20 calendar days following service of the Commission's final determination;

(ii) Raise new questions of law or fact that would materially alter the Commission's final determination; and

(iii) Set forth clear and convincing grounds why such questions were not and could not have been presented during the earlier determination process.

(2) If a candidate files a timely petition under this section challenging a Commission final repayment determination, the time for repayment will be suspended until the Commission serves notice on the candidate of its determination on the petition. The time periods for making repayment under 11 CFR 9007.2(d)(2) shall apply to any amounts determined to be repayable following the Commission's consideration of a petition for rehearing under this section.

(b) *Effect of failure to raise issues.* The candidate's failure to raise an argument in a timely fashion during the initial determination process or in a petition for rehearing under this section, as appropriate, shall be deemed a waiver of the candidate's right to present such arguments in any future stage of proceedings including any petition for review filed under 26 U.S.C. 9011(a). An issue is not timely raised in a petition for rehearing if it could have been raised earlier in response to the Commission's initial determination.

(c) *Stay of repayment determination pending appeal.* (1) (i) The candidate may apply to the Commission for a stay of all or a portion of the amount determined to be rapayable under this section or under 11 CFR 9007.2 pending the candidate's appeal of that repayment determination pursuant to 26 U.S.C. 9011(a). The repayment amount requested to be stayed shall not exceed the amount at issue on appeal.

(ii) A request for a stay shall be made in writing and shall be filed within 30 calendar days after service of the Commission's decision on a petition for rehearing under paragraph (a) or, if no petition for rehearing is filed, within 30 calendar days after service of the Commission's final repayment determination under 11 CFR 9007.2(c)(4).

(2) The Commission's approval of a stay request will be conditioned upon

the candidate's presentation of evidence in the stay request that he or she:

(i) Has placed the entire amount at issue in a separate interest-bearing account pending the outcome of the appeal and that withdrawals from the account may only be made with the joint signatures of the candidate or his or her agent and a Commission representative; or

(ii) Has posted a surety bond guaranteeing payment of the entire amount at issue plus interest; or

(iii) Has met the following criteria:

(A) He or she will suffer irreparable injury in the absence of a stay; and, if so, that

(B) He or she has made a strong showing of the likelihood of success on the merits of the judicial action.

(C) Such relief is consistent with the public interest; and

(D) No other party interested in the proceedings would be substantially harmed by the stay.

(3) In determining whether the candidate has made a strong showing of the likelihood of success on the merits under paragraph (c)(2)(iii)(B) of this section, the Commission may consider whether the issue on appeal presents a novel or admittedly difficult legal question and whether the equities of the case suggest that the status quo should be maintained.

(4) All stays shall require the payment of interest on the amount at issue. The amount of interest due shall be calculated from the date 30 days after service of the Commission's final repayment determination under 11 CFR 9007.2(c)(4) and shall be the greater of:

(i) An amount calculated in accordance with 28 U.S.C. 1961(a) and (b); or

(ii) The amount actually earned on the funds set aside under this section.

§ 9007.6 Stale-dated committee checks.

If the committee has checks outstanding to creditors or contributors that have not been cashed, the committee shall notify the Commission. The committee shall inform the Commission of its efforts to locate the payees, if such efforts have been necessary, and its efforts to encourage the payees to cash the outstanding checks. The committee shall also submit a check for the total amount of such outstanding checks, payable to the United States Treasury.

9. 11 CFR part 9012 would be revised to read as follows:

PART 9012—UNAUTHORIZED EXPENDITURES AND CONTRIBUTIONS

Sec.

9012.1 Excessive expenses.
9012.2 Unauthorized acceptance of contributions.
9012.3 Unlawful use of payments received from the fund.
9012.4 Unlawful misrepresentations and falsification of statements, records or other evidence to the Commission; refusal to furnish books and records.
9012.5 Kickbacks and illegal payments.

Authority: 26 U.S.C. 9012.

§ 9012.1 Excessive expenses.

(a) It shall be unlawful for an eligible candidate of a political party for President and Vice President in a Presidential election or the candidate's authorized committee(s) knowingly and willfully to incur qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party are entitled under 11 CFR part 9004 with respect to such election.

(b) It shall be unlawful for the national committee of a major or minor party knowingly and willfully to incur expenses with respect to a presidential nominating convention in excess of the expenditure limitation applicable with respect to such committee under 11 CFR part 9008, unless the incurring of such expenses is authorized by the Commission under 11 CFR 9008.8(a)(3).

§ 9012.2 Unauthorized acceptance of contributions.

(a) It shall be unlawful for an eligible candidate of a major party in a Presidential election or any of his or her authorized committees knowingly and willfully to accept any contribution to defray qualified campaign expenses, except to the extent necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b), or to defray expenses which would be qualified campaign expenses but for 11 CFR 9002.11(a)(3).

(b) It shall be unlawful for an eligible candidate of a political party (other than a major party) in a Presidential election or any of his or her authorized committees knowingly and willfully to accept and expend or retain contributions to defray qualified campaign expenses in an amount which exceeds the qualified campaign expenses incurred in that election by that eligible candidate or his or her authorized committee(s).

§ 9012.3 Unlawful use of payments received from the Fund.

(a) It shall be unlawful for any person who receives any payment under 11 CFR part 9005, or to whom any portion of any payment so received is transferred, knowingly and willfully to use, or authorize the use of, such payment or any portion thereof for any purpose other than—

(1) To defray the qualified campaign expenses with respect to which such payment was made; or

(2) To repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray such qualified campaign expenses.

(b) It shall be unlawful for the national committee of a major or minor party which receives any payment under 11 CFR part 9008 to use, or authorize the use of, such payment for any purpose other than a purpose authorized by 11 CFR 9008.7.

§ 9012.4 Unlawful misrepresentations and falsification of statements, records or other evidence to the Commission; refusal to furnish books and records.

It shall be unlawful for any person knowingly and willfully—

(a) To furnish any false, fictitious, or fraudulent evidence, books or information to the Commission under 11 CFR parts 9001–9008, or to include in any evidence, books or information so furnished any misrepresentation of a material fact, or to falsify or conceal any evidence, books or information relevant to a certification by the Commission or any examination and audit by the Commission under 11 CFR parts 9001 *et seq.*; or

(b) To fail to furnish to the Commission any records, books or information requested by the Commission for purposes of 11 CFR parts 9001 *et seq.*

§ 9012.5 Kickbacks and illegal payments.

(a) It shall be unlawful for any person knowingly and willfully to give or accept any kickback or any illegal payment in connection with any qualified campaign expenses of any eligible candidate or his or her authorized committee(s).

(b) It shall be unlawful for the national committee of a major or minor party knowingly and willfully to give or accept any kickback or any illegal payment in connection with any expense incurred by such committee with respect to a Presidential nominating convention.

10. 11 CFR parts 9031 through 9039 would be revised to read as follows:

PART 9031—SCOPE

Sec.
9031.1 Scope.

Authority: 26 U.S.C. 9031 and 9039(b).

§ 9031.1 Scope.

This subchapter governs entitlement to and use of funds certified from the Presidential Primary Matching Payment Account under 26 U.S.C. 9031 *et seq.* The definitions, restrictions, liabilities and obligations imposed by this subchapter are in addition to those imposed by sections 431–455 of title 2, United States Code, and regulations prescribed thereunder (11 CFR parts 100 through 116). Unless expressly stated to the contrary, this subchapter does not alter the effect of any definitions, restrictions, obligations and liabilities imposed by sections 431–455 of title 2, United States Code, or regulations prescribed thereunder (11 CFR parts 100 through 116).

PART 9032—DEFINITIONS

Sec.
9032.1 Authorized committee.
9032.2 Candidate.
9032.3 Commission.
9032.4 Contribution.
9032.5 Matching payment account.
9032.6 Matching payment period.
9032.7 Primary election.
9032.8 Political committee.
9032.9 Qualified campaign expenses.
9032.10 Secretary.
9032.11 State.

Authority: 26 U.S.C. 9032 and 9039(b).

§ 9032.1 Authorized committee.

(a) Notwithstanding the definition at 11 CFR 100.5, "authorized committee" means with respect to candidates (as defined at 11 CFR 9032.2) seeking the nomination of a political party for the office of President, any political committee that is authorized by a candidate to solicit or receive contributions or to incur expenditures on behalf of the candidate. The term "authorized committee" includes the candidate's principal campaign committee designated in accordance with 11 CFR 102.12, any political committee authorized in writing by the candidate in accordance with 11 CFR 102.13, and any political committee not disavowed by the candidate in writing pursuant to 11 CFR 100.3(a)(3).

(b) Any withdrawal of an authorization shall be in writing and shall be addressed and filed in the same manner provided for at 11 CFR 102.12 or 102.13.

(c) For the purposes of this subchapter, references to the "candidate" and his or her responsibilities under this subchapter shall also be deemed to refer to the candidate's authorized committee(s).

(d) An expenditure by an authorized committee on behalf of the candidate who authorized the committee cannot qualify as an independent expenditure.

(e) A delegate committee, as defined in 11 CFR 100.5(e)(5), is not an authorized committee of a candidate unless it also meets the requirements of 11 CFR 9032.1(a). Expenditures by delegate committees on behalf of a candidate may count against that candidate's expenditure limitation under the circumstances set forth in 11 CFR 110.14.

§ 9032.2 Candidate.

Candidate means an individual who seeks nomination for election to the office of President of the United States. An individual is considered to seek nomination for election if he or she—

(a) Takes the action necessary under the law of a State to qualify for a caucus, convention, primary election or run-off election;

(b) Receives contributions or incurs qualified campaign expenses;

(c) Gives consent to any other person to receive contributions or to incur qualified campaign expenses on his or her behalf; or

(d) Receives written notification from the Commission that any other person is receiving contributions or making expenditures on the individual's behalf and fails to disavow that activity by letter to the Commission within 30 calendar days after receipt of notification.

§ 9032.3 Commission.

Commission means the Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

§ 9032.4 Contribution.

For purposes of this subchapter, *contribution* has the same meaning given the term under 2 U.S.C. 431(8)(A) and 11 CFR 100.7, except as provided at 11 CFR 9034.4(b)(4).

§ 9032.5 Matching payment account.

Matching payment account means the Presidential Primary Matching Payment Account established by the Secretary of the Treasury under 26 U.S.C. 9037(a).

§ 9032.6 Matching payment period.

Matching payment period means the period beginning January 1 of the calendar year in which a Presidential general election is held and may not exceed one of the following dates: (a) For a candidate seeking the nomination of a party which nominates its Presidential candidate at a national convention, the date on which the party nominates its candidate. (b) For a candidate seeking the nomination of a party which does not make its nomination at a national convention, the earlier of—

(1) The date the party nominates its Presidential candidate, or

(2) The last day of the last national convention held by a major party in the calendar year.

§ 9032.7 Primary election.

(a) *Primary election* means an election held by a State or a political party, including a run-off election, or a nominating convention or a caucus—

(1) For the selection of delegates to a national nominating convention of a political party;

(2) For the expression of a preference for the nomination of Presidential candidates;

(3) For the purposes stated in both paragraphs (1) and (2) of this section; or

(4) To nominate a Presidential candidate.

(b) If separate primary elections are held in a State by the State and a political party, the primary election for the purposes of this subchapter will be the election held by the political party.

§ 9032.8 Political committee.

Political committee means any committee, club, association, organization or other group of persons (whether or not incorporated) which accepts contributions or incurs qualified campaign expenses for the purpose of influencing, or attempting to influence, the nomination of any individual for election to the office of President of the United States.

§ 9032.9 Qualified campaign expense.

(a) *Qualified campaign* expense means a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value—

(1) Incurred by or on behalf of a candidate or his or her authorized committees from the date the individual becomes a candidate through the last day of the candidate's eligibility as determined under 11 CFR 9033.5;

(2) Made in connection with his or her campaign for nomination; and

(3) Neither the incurrence nor payment of which constitutes a violation of any law of the United States or of any law of any State in which the expense is incurred or paid, or of any regulation prescribed under such law of the United States or of any State, except that any State law which has been preempted by the Federal Election Campaign Act of 1971, as amended, will not be

considered a State law for purposes of this subchapter.

(b) An expenditure is made on behalf of a candidate, including a Vice Presidential candidate, if it is made by—

(1) An authorized committee or any other agent of the candidate for purposes of making an expenditure;

(2) Any person authorized or requested by the candidate, an authorized committee of the candidate, or an agent of the candidate to make the expenditure; or

(3) A committee which has been requested by the candidate, by an authorized committee of the candidate, or by an agent of the candidate to make the expenditure, even though such committee is not authorized in writing.

(c) Expenditures incurred either before the date an individual becomes a candidate or after the last day of a candidate's eligibility will be considered qualified campaign expenses if they meet the provisions of 11 CFR 9034.4(a). Expenditures described under 11 CFR 9034.4(b) will not be considered qualified campaign expenses.

§ 9032.10 Secretary.

For purposes of this subchapter, *Secretary* means the Secretary of the Treasury.

§ 9032.11 State.

State means each State of the United States, Puerto Rico, the Canal Zone, the Virgin Islands, the District of Columbia, and Guam.

PART 9033—ELIGIBILITY FOR PAYMENTS

Sec.

9033.1 Candidate and committee agreements.
9033.2 Candidate and committee certifications; threshold submission.
9033.3 Expenditure limitation certification.
9033.4 Matching payment eligibility threshold requirements.
9033.5 Determination of ineligibility date.
9033.6 Determination of inactive candidacy.
9033.7 Determination of active candidacy.
9033.8 Reestablishment of eligibility.
9033.9 Failure to comply with disclosure requirements or expenditure limitations.
9033.10 Procedures for initial and final determinations.
9033.11 Documentation of disbursements.
9033.12 Production of computerized information.

Authority: 26 U.S.C. 9033 and 9039(b).

§ 9033.1 Candidate and committee agreements.

(a) *General.* (1) A candidate seeking to become eligible to receive Presidential primary matching fund payments shall agree in a letter signed by the candidate to the Commission that the candidate and the candidate's authorized committee(s) will comply with the conditions set forth in 11 CFR 9033.1(b). The candidate may submit the letter containing the agreements required by this section at any time after January 1 of the year immediately preceding the Presidential election year.

(2) The Commission will not consider a candidate's threshold submission until the candidate has submitted a candidate agreement that meets the requirements of this section.

(b) *Conditions.* The candidate shall agree that:

(1) The candidate has the burden of proving that disbursements by the candidate or any authorized committee(s) or agents thereof are qualified campaign expenses as defined at 11 CFR 9032.9.

(2) The candidate and the candidate's authorized committee(s) will comply with the documentation requirements set forth in 11 CFR 9033.11.

(3) The candidate and the candidate's authorized committee(s) will provide an explanation, in addition to complying with the documentation requirements, of the connection between any disbursements made by the candidate or authorized committee(s) of the candidate and the campaign if requested by the Commission.

(4) The candidate and the candidate's authorized committee(s) shall verify, at least once a month, that the amount needed to make all refunds required under 11 CFR 103.3(b)(4) continues to be maintained in the authorized committee's account(s), and shall retain worksheets and bank records supporting each verification made.

(5) The candidate and the candidate's authorized committee(s) will keep and furnish to the Commission all documentation for matching fund submissions, any books, records (including bank records for all accounts), and supporting documentation and other information that the Commission may request.

(6) The candidate and the candidate's authorized committee(s) will keep and furnish to the Commission all documentation relating to disbursements and receipts including any books, records (including bank records for all accounts), all documentation required by this section including those required to be maintained under 11 CFR 9033.11, and other information that the Commission may request. If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the categories of data listed in 11 CFR 9033.12(a), the committee will provide computerized magnetic media such as magnetic tapes or magnetic diskettes, containing the computerized information at the times specified in 11 CFR 9038.1(b)(1) that meet the requirements of 11 CFR 9033.12(b). Upon request, documentation explaining the computer's system's software capabilities shall be provided, and such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the committee shall also be made available.

(7) Agree that if their authorized committee(s) file a schedule of itemized receipts or disbursements pursuant to 11 CFR 104.3 that was generated directly or indirectly from computerized files or computerized records, the schedule shall list in alphabetical order the sources of the receipts and the payees. Such schedule shall list all individuals, including contributors and payees, in alphabetical order by surname.

(8) The candidate and the candidate's authorized committee(s) will obtain and furnish to the Commission upon request all documentation relating to funds received and disbursements made on the candidate's behalf by other political committees and organizations associated with the candidate.

(9) The candidate and the candidate's authorized committee(s) will permit an audit and examination pursuant to 11 CFR part 9038 of all receipts and disbursements including those made by the candidate, all authorized committee(s) and any agent or person authorized to make expenditures on behalf of the candidate or committee(s). The candidate and authorized committee(s) shall facilitate the audit by making available in one central location, office space, records and such personnel as are necessary to conduct the audit and examination, and shall pay any amounts required to be repaid under 11 CFR parts 9038 and 9039.

(10) The candidate and the candidate's authorized committee(s) will submit the name and mailing address of the person who is entitled to receive matching fund payments on behalf of the candidate and the name and address of the national or State bank designated by the candidate as a campaign depository as required by 11 CFR part 103 and 11 CFR 9037.3. Changes in the information required by this paragraph shall not be effective until submitted to the Commission in a letter signed by the candidate or the Committee treasurer.

(11) The candidate and the candidate's authorized committee(s) will prepare matching fund submissions in accordance with the Federal Election

Commission's Guideline for Presentation in Good Order.

(12) The candidate and the candidate's authorized committee(s) will comply with the applicable requirements of 2 U.S.C. 431 *et seq.*; 26 U.S.C. 9031 *et seq.* and the Commission's regulations at 11 CFR parts 100–116, and 9031–9039.

(13) The candidate and the candidate's authorized committee(s) will pay any civil penalties included in a conciliation agreement imposed under 2 U.S.C. 437g against the candidate, any authorized committee of the candidate or any agent thereof.

§ 9033.2 Candidate and committee certifications; threshold submission.

(a) *General.* (1) A candidate seeking to become eligible to receive Presidential primary matching fund payments shall make the certifications set forth in 11 CFR 9033.2(b) to the Commission in a written statement signed by the candidate. The candidate may submit the letter containing the required certifications at any time after January 1 of the year immediately preceding the Presidential election year.

(2) The Commission will not consider a candidate's threshold submission until the candidate has submitted candidate certifications that meet the requirements of this section.

(b) *Certifications.* (1) The candidate shall certify that he or she is seeking nomination by a political party to the Office of President in more than one State. For purposes of this section, in order for a candidate to be deemed to be seeking nomination by a political party to the office of President, the party whose nomination the candidate seeks must have a procedure for holding a primary election, as defined in 11 CFR 9032.7, for nomination to that office. For purposes of this section, the term "political party" means an association, committee or organization which nominates an individual for election to the office of President. The fact that an association, committee or organization qualifies as a political party under this section does not affect the party's status as a national political party for purposes of 2 U.S.C. 441a(a)(1)(B) and 441a(a)(2)(B).

(2) The candidate and the candidate's authorized committee(s) shall certify that they have not incurred and will not incur expenditures in connection with the candidate's campaign for nomination, which expenditures are in excess of the limitations under 11 CFR part 9035.

(3) The candidate and the candidate's authorized committee(s) shall certify:

(i) That they have received matchable contributions totaling more than $5,000 in each of at least 20 States; and

(ii) That the matchable contributions are from individuals who are residents of the State for which their contributions are submitted.

(iii) A maximum of $250 of each individual's aggregate contributions will be considered as matchable contributions for the purpose of meeting the thresholds of this section.

(iv) For purposes of this section, contributions of an individual who maintains residences in more than one State may only be counted toward the $5,000 threshold for the State from which the earliest contribution was made by that contributor.

(c) *Threshold submission.* To become eligible to receive matching payments, the candidate shall submit documentation of the contributions described in 11 CFR 9033.2(b)(3) to the Commission for review. The submission shall follow the format and requirements of 11 CFR 9036.1.

§ 9033.3 Expenditure limitation certification.

(a) If the Commission makes an initial determination that a candidate or the candidate's authorized committee(s) have knowingly and substantially exceeded the expenditure limitations at 11 CFR part 9035 prior to that candidate's application for certification, the Commission may make an initial determination that the candidate is ineligible to receive matching funds.

(b) The Commission will notify the candidate of its initial determination, in accordance with the procedures outlined in 11 CFR 9033.10(b). The candidate may submit, within 20 calendar days after service of the Commission's notice, written legal or factual materials, in accordance with 11 CFR 9033.10(b), demonstrating that he or she has not knowingly and substantially exceeded the expenditure limitations at 11 CFR part 9035.

(c) A final determination of the candidate's ineligibility will be made by the Commission in accordance with the procedures outlined in 11 CFR 9033.10(c).

(d) A candidate who receives a final determination of ineligibility under 11 CFR 9033.3(c) shall be ineligible to receive matching fund payments under 11 CFR 9034.1.

§ 9033.4 Matching payment eligibility threshold requirements.

(a) The Commission will examine the submission made under 11 CFR 9033.1 and 9033.2 and either—

(1) Make a determination that the candidate has satisfied the minimum contribution threshold requirements under 11 CFR 9033.2(c); or

(2) Make an initial determination that the candidate has failed to satisfy the matching payment threshold requirements. The Commission will notify the candidate of its initial determination in accordance with the procedures outlined in 11 CFR 9033.10(b). The candidate may, within 30 calendar days after service of the Commission's notice, satisfy the threshold requirements or submit in accordance with 11 CFR 9033.10(b) written legal or factual materials to demonstrate that he or she has satisfied those requirements. A final determination by the Commission that the candidate has failed to satisfy threshold requirements will be made in accordance with the procedures outlined in 11 CFR 9033.10(c).

(b) In evaluating the candidate's submission under 11 CFR 9033.1 and 9033.2, the Commission may consider other information in its possession, including but not limited to past actions of the candidate in an earlier publicly-financed campaign, that is relevant to a determination regarding the candidate's eligibility for matching funds.

(c) The Commission will make its examination and determination under this section as soon as practicable. During the Presidential election year, the Commission will generally complete its review and make its determination within 15 business days.

§ 9033.5 Determination of ineligibility date.

The candidate's date of ineligibility shall be whichever date by operation of 11 CFR 9033.5 (a), (b) or (c) occurs first. After the candidate's date of ineligibility, he or she may only receive matching payments to the extent that he or she has net outstanding campaign obligations as defined in 11 CFR 9034.5.

(a) *Inactive candidate.* The ineligibility date shall be the day on which an individual ceases to be a candidate because he or she is not actively conducting campaigns in more than one State in connection with seeking the Presidential nomination. This date shall be the earliest of—

(1) The date the candidate publicly announces that he or she will not be actively conducting campaigns in more than one State; or

(2) The date the candidate notifies the Commission by letter that he or she is not actively conducting campaigns in more than one State; or

(3) The date which the Commission determines under 11 CFR 9033.6 to be

the date that the candidate is not actively seeking election in more than one State.

(b) *Insufficient votes.* The ineligibility date shall be the 30th day following the date of the second consecutive primary election in which such individual receives less than 10 percent of the number of popular votes cast for all candidates of the same party for the same office in that primary election, if the candidate permitted or authorized his or her name to appear on the ballot, unless the candidate certifies to the Commission at least 25 business days prior to the primary that he or she will not be an active candidate in the primary involved.

(1) The Commission may refuse to accept the candidate's certification if it determines under 11 CFR 9033.7 that the candidate is an active candidate in the primary involved.

(2) For purposes of this paragraph, if the candidate is running in two primary elections in different States on the same date, the highest percentage of votes the candidate receives in any one State will govern. Separate primary elections held in more than one State on the same date are not deemed to be consecutive primaries. If two primary elections are held on the same date in the same State (e.g., a primary to select delegates to a national nominating convention and a primary for the expression of preference for the nomination of candidates for election to the office of President), the highest percentage of votes a candidate receives in either election will govern. If two or more primaries are held in the same State on different dates, the earliest primary will govern.

(3) If the candidate certifies that he or she will not be an active candidate in a particular primary, and the Commission accepts that candidate's certification, the primary involved shall not be counted in determining the candidate's date of ineligibility under paragraph (b) of this section, regardless of the percentage of popular votes cast for the candidate in that primary.

(c) *End of matching payment period.* The ineligibility date shall be the last day of the matching payment period for the candidate as specified in 11 CFR 9032.6.

(d) *Reestablishment of eligibility.* If the Commission has determined that a candidate is ineligible under 11 CFR 9033.5 (a) or (b), the candidate may reestablish eligibility to receive matching funds under 11 CFR 9033.8.

§ 9033.6 Determination of inactive candidacy.

(a) *General.* The Commission may, on the basis of the factors listed in 11 CFR 9033.6(b) below, make a determination that a candidate is no longer actively seeking nomination for election in more than one State. Upon a final determination by the Commission that a candidate is inactive, that candidate will become ineligible as provided in 11 CFR 9033.5.

(b) *Factors considered.* In making its determination of inactive candidacy, the Commission may consider, but is not limited to considering, the following factors:

(1) The frequency and type of public appearances, speeches, and advertisements;

(2) Campaign activity with respect to soliciting contributions or making expenditures for campaign purposes;

(3) Continued employment of campaign personnel or the use of volunteers;

(4) The release of committed delegates;

(5) The candidate urges his or her delegates to support another candidate while not actually releasing committed delegates;

(6) The candidate urges supporters to support another candidate.

(c) *Initial determination.* The Commission will notify the candidate of its initial determination in accordance with the procedures outlined in 11 CFR 9033.10(b) and will advise the candidate of the date on which active campaigning in more than one State ceased. The candidate may, within 15 business days after service of the Commission's notice, submit in accordance with 11 CFR 9033.10(b) written legal or factual materials to demonstrate that he or she is actively campaigning in more than one State.

(d) *Final determination.* A final determination of inactive candidacy will be made by the Commission in accordance with the procedures outlined in 11 CFR 9033.10(c).

§ 9033.7 Determination of active candidacy.

(a) Where a candidate certifies to the Commission under 11 CFR 9033.5(b) that he or she will not be an active candidate in an upcoming primary, the Commission may, nevertheless, on the basis of factors listed in 11 CFR 9033.6(b), make an initial determination that the candidate is an active candidate in the primary involved.

(b) The Commission will notify the candidate of its initial determination within 10 business days of receiving the candidate's certification under 11 CFR 9033.5(b) or, if the timing of the activity does not permit notice during the 10 day period, as soon as practicable following campaign activity by the candidate in the primary state. The Commission's initial determination will be made in accordance with the procedures outlined in 11 CFR 9033.10(b). Within 10 business days after service of the Commission's notice the candidate may submit, in accordance with 11 CFR 9033.10(b), written legal or factual materials to demonstrate that he or she is not an active candidate in the primary involved.

(c) A final determination by the Commission that the candidate is active will be made in accordance with the procedures outlined in 11 CFR 9033.10(c).

§ 9033.8 Reestablishment of eligibility.

(a) *Candidates found to be inactive.* A candidate who has become ineligible under 11 CFR 9033.5(a) on the basis that he or she is not actively campaigning in more than one State may reestablish eligibility for matching payments by submitting to the Commission evidence of active campaigning in more than one State. In determining whether the candidate has reestablished eligibility, the Commission will consider, but is not limited to considering, the factors listed in 11 CFR 9033.6(b). The day the Commission determines to be the day the candidate becomes active again will be the date on which eligibility is reestablished.

(b) *Candidates receiving insufficient votes.* A candidate determined to be eligible under 11 CFR 9033.5(b) by failing to obtain the required percentage of votes in two consecutive primaries may have his or her eligibility reestablished if the candidate receives at least 20 percent of the total number of votes cast for candidates of the same party for the same office in a primary election held subsequent to the date of the election which rendered the candidate ineligible.

(c) The Commission will make its determination under 11 CFR 9033.8 (a) or (b) without requiring the individual to reestablish eligibility under 11 CFR 9033.1 and 2. A candidate whose eligibility is reestablished under this section may submit, for matching payment, contributions received during ineligibility. Any expenses incurred during the period of ineligibility that would have been considered qualified campaign expenses if the candidate had been eligible during that time may be defrayed with matching payments.

§ 9033.9 Failure to comply with disclosure requirements or expenditure limitations.

(a) If the Commission receives information indicating that a candidate or his or her authorized committee(s) has knowingly and substantially failed

to comply with the disclosure requirements of 2 U.S.C. 434 and 11 CFR part 104, or that a candidate has knowingly and substantially exceeded the expenditure limitations at 11 CFR part 9035, the Commission may make an initial determination to suspend payments to that candidate.

(b) The Commission will notify the candidate of its initial determination in accordance with the procedures outlined in 11 CFR 9033.10(b). The candidate will be given an opportunity, within 20 calendar days after service of the Commission's notice, to comply with the above cited provisions or to submit in accordance with 11 CFR 9033.10(b) written legal or factual materials to demonstrate that he or she is not in violation of those provisions.

(c) Suspension of payments to a candidate will occur upon a final determination by the Commission to suspend payments. Such final determination will be made in accordance with the procedures outlined in 11 CFR 9033.10(c).

(d)(1) A candidate whose payments have been suspended for failure to comply with reporting requirements may become entitled to receive payments if he or she subsequently files the required reports and pays or agrees to pay any civil or criminal penalties resulting from failure to comply.

(2) A candidate whose payments are suspended for exceeding the expenditure limitations shall not be entitled to receive further matching payments under 11 CFR 9034.1.

§ 9033.10 Procedures for initial and final determinations.

(a) *General.* The Commission will follow the procedures set forth in this section when making an initial or final determination based on any of the following reasons.

(1) The candidate has knowingly and substantially exceeded the expenditure limitations of 11 CFR part 9035 prior to the candidate's application for certification, as provided in 11 CFR 9033.3;

(2) The candidate has failed to satisfy the matching payment threshold requirements as provided in 11 CFR 9033.4.

(3) The candidate is no longer actively seeking nomination in more than one state, as provided in 11 CFR 9033.6;

(4) The candidate is an active candidate in an upcoming primary despite the candidate's assertion to the contrary, as provided in 11 CFR 9033.7;

(5) The Commission receives information indicating that the candidate has knowingly and substantially failed to comply with the disclosure requirements or exceeded the expenditure limits, as provided in 11 CFR 9033.9; or

(6) The Commission receives information indicating that substantial assets of the candidate's authorized committee have been undervalued or not included in the candidate's statement of net outstanding campaign obligations or that the amount of outstanding campaign obligations has been otherwise overstated in relation to committee assets, as provided in 11 CFR 9034.5(g).

(b) *Initial determination.* If the Commission makes an initial determination that a candidate may not receive matching funds for one or more of the reasons indicated in 11 CFR 9033.10(a), the Commission will notify the candidate of its initial determination. The notification will give the legal and factual reasons for the determination and advise the candidate of the evidence on which the Commission's initial determination is based. The candidate will be given an opportunity to comply with the requirements at issue or to submit, within the time provided by the relevant section as referred to in 11 CFR 9033.10(a), written legal or factual materials to demonstrate that the candidate has satisfied those requirements. Such materials may be submitted by counsel if the candidate so desires.

(c) *Final determination.* The Commission will consider any written legal or factual materials timely submitted by the candidate before making its final determination. A final determination that the candidate has failed to satisfy the requirements at issue will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the legal and factual reasons underlying the Commission's determination and will summarize the results of any investigation upon which the determination is based.

(d) *Effect on other determinations.* If the Commission makes an initial determination under this section, but decides to take no further action at that time, the Commission may use the legal and factual bases on which the initial determination was based in any future repayment determination under 11 CFR parts 9038 or 9039. A determination by the Commission under this section may be independent of any Commission decision to institute an enforcement proceeding under 2 U.S.C. 437g.

(e) *Petitions for rehearing.* Following a final determination under this section, the candidate may file a petition for rehearing in accordance with 11 CFR 9038.5(a).

§ 9033.11 Documentation of disbursements.

(a) *Burden of proof.* Each candidate shall have the burden of proving that disbursements made by the candidate or his or her authorized committee(s) or persons authorized to make expenditures on behalf of the candidate or committee(s) are qualified campaign expenses as defined in 11 CFR 9032.9. The candidate and his or her authorized committee(s) shall obtain and furnish to the Commission on request any evidence regarding qualified campaign expenses made by the candidate, his or her authorized committees and agents or persons authorized to make expenditures on behalf of the candidate or committee(s) as provided in 11 CFR 9033.11(b).

(b) *Documentation required.* (1) For disbursements in excess of $200 to a payee, the candidate shall present either:

(i) A receipted bill from the payee that states the purpose of the disbursement, or

(ii) If such a receipt is not available, a canceled check negotiated by the payee, and

(A) One of the following documents generated by the payee: A bill, invoice, or voucher that states the purpose of the disbursement; or

(B) Where the documents specified in 11 CFR 9033.11(b)(1)(ii)(A) are not available, a voucher or contemporaneous memorandum from the candidate or the committee that states the purpose of the disbursement; or

(iii) If neither a receipted bill as specified in 11 CFR 9033.11(b)(1)(i) nor the supporting documentation specified in 11 CFR 9033.11(b)(1)(ii) is available, a canceled check negotiated by the payee that states the purpose of the disbursement.

(iv) Where the supporting documentation required in 11 CFR 9033.11(b)(1) (i), (ii) or (iii) is not available, the candidate or committee may present a canceled check and collateral evidence to document the qualified campaign expense. Such collateral evidence must show that the expenditure is part of an identifiable program or project which is otherwise sufficiently documented to permit allocation under 11 CFR 106.2, such as a disbursement which is one of a number of documented disbursements relating to a campaign mailing or to the operation of a campaign office.

(2) For all other disbursements the candidate shall present:

(i) A record disclosing the identification of the payee, the amount, date and purpose of the disbursement, if made from a petty cash fund; or

(ii) A canceled check negotiated by the payee that states the identification of the payee, and the amount, date and purpose of the disbursement.

(3) For purposes of this section,

(i) *Payee* means the person who provides the goods or services to the candidate or committee in return for the disbursement; except that an individual will be considered a payee under this section if he or she received $500 or less advanced for travel and/or subsistence and if he or she is the recipient of the goods or services purchased.

(ii) *Purpose* means the identification of the payee, the date and amount of the disbursement, and a description of the goods or services purchased.

(c) *Retention of records.* The candidate shall retain records, with respect to each disbursement and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, matching fund submissions, and any related materials documenting campaign receipts and disbursements, for a period of three years pursuant to 11 CFR 102.9(c), and shall present these records to the Commission on request.

(d) *List of capital and other assets—*(1) *Capital assets.* The candidate or committee shall maintain a list of all capital assets whose purchase price exceeded $2000 when acquired by the candidate's authorized committee(s). The list shall include a brief description of each capital asset, the purchase price, the date it was acquired, the method of disposition and the amount received in disposition. For purposes of this section, "capital asset" shall be defined in accordance with 11 CFR 9034.5(c)(1).

(2) *Other assets.* The candidate or committee shall maintain a list of other assets acquired for use in fundraising or as collateral for campaign loans, if the aggregate value of such assets exceeds $5000. The list shall include a brief description of each such asset, the fair market value of each asset, the method of disposition and the amount received in disposition. The fair market value of other assets shall be determined in accordance with 11 CFR 9034.5(c)(2).

§ 9033.12 Production of computerized information.

(a) *Categories of computerized information to be provided.* If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the categories of data listed in paragraphs (a)(1) through (a)(9) of this section, the committee shall provide computerized magnetic media, such as magnetic tapes or magnetic diskettes, containing the computerized information at the times specified in 11 CFR 9038.1(b)(1):

(1) Information required by law to be maintained regarding the committee's receipts or disbursements;

(2) Records of allocations of expenditures to particular state expenditure limits and to the overall expenditure limit;

(3) Disbursements for exempt fundraising and exempt compliance costs, including the allocation of salaries and overhead expenditures;

(4) Records of allocations of expenditures for the purchase of broadcast media;

(5) Records used to prepare statements of net outstanding campaign obligations;

(6) Records used to reconcile bank statements;

(7) Disbursements made and reimbursements received for the cost of transportation, ground services and facilities made available to media personnel, including records relating to how costs charged to media personnel were determined;

(8) Records relating to the acquisition, use and disposition of capital assets or other assets; and

(9) Any other information that may be used during the Commission's audit to review the committee's receipts, disbursements, loans, debts, obligations, bank reconciliations or statements of net outstanding campaign obligations.

(b) *Obligation of computerized information and technical specifications.* The computerized magnetic media shall be prepared and delivered at the committee's expense and shall conform to the technical specifications, including file requirements, described in the Federal Election Commission's Computerized Magnetic Media Requirements for Title 26 Candidates/Committees Receiving Federal Funding. The data contained in the computerized magnetic media provided to the Commission shall be organized in the order specified by the Computerized Magnetic Media Requirements.

(c) *Additional materials and assistance.* Upon request, the committee shall provide documentation explaining the computer system's software capabilities, such as user guides, technical manuals, formats, layouts and other materials for processing and analyzing the information requested. Upon request, the committee shall also make available such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the committee.

PART 9034—ENTITLEMENTS

Sec.

9034.1 Candidate entitlements.
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9034.6 Reimbursements for transportation and services made available to media personnel.
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9034.8 Joint fundraising.
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Authority: 26 U.S.C. 9034 and 9039(b).

§ 9034.1 Candidate entitlements.

(a) A candidate who has been notified by the Commission under 11 CFR 9036.1 that he or she has successfully satisfied eligibility and certification requirements is entitled to receive payments under 26 U.S.C. 9037 and 11 CFR part 9037 in an amount equal to the amount of each matchable campaign contribution received by the candidate, except that a candidate who has become ineligible under 11 CFR 9033.5 may not receive further matching payments regardless of the date of deposit of the underlying contributions if he or she has no net outstanding campaign obligations as defined in 11 CFR 9034.5.

(b) If on the date of ineligibility a candidate has net outstanding campaign obligations as defined under 11 CFR 9034.5, that candidate may continue to receive matching payments for matchable contributions received and deposited on or before December 31 of the Presidential election year provided that on the date of payment there are remaining net outstanding campaign obligations, i.e., the sum of the contributions received on or after the date of ineligibility plus matching funds received on or after the date of ineligibility is less than the candidate's net outstanding campaign obligations. This entitlement will be equal to the lesser of:

(1) The amount of contributions submitted for matching; or

(2) The remaining net outstanding campaign obligations. (c) A candidate whose eligibility has been reestablished under 11 CFR 9033.8 or who after suspension of payments has met the conditions set forth at 11 CFR 9033.9(d)

is entitled to receive payments for matchable contributions for which payments were not received during the ineligibility or suspension period. (d) The total amount of payments to a candidate under this section shall not exceed 50% of the total expenditure limitation applicable under 11 CFR part 9035.

§ 9034.2 Matchable contributions.

(a) Contributions meeting the following requirements will be considered matchable campaign contributions.

(1) The contribution shall be a gift of money made: By an individual; by a written instrument and for the purpose of influencing the result of a primary election.

(2) Only a maximum of $250 of the aggregate amount contributed by an individual may be matched.

(3) Before a contribution may be submitted for matching, it must actually be received by the candidate or any of the candidate's authorized committees and deposited in a designated campaign depository maintained by the candidate's authorized committee.

(4) The written instrument used in making the contribution must be dated, physically received and deposited by the candidate or authorized committee on or after January 1 of the year immediately preceding the calendar of the Presidential election, but no later than December 31 following the matching payment period as defined under 11 CFR 9032.6. Donations received by an individual who is testing the waters pursuant to 11 CFR 100.7(b)(1) and 100.8(b)(1) may be matched when the individual becomes a candidate if such donations meet the requirements of this section.

(b) For purposes of this section, the term "written instrument" means a check written on a personal, escrow or trust account representing or containing the contributor's personal funds; a money order; or any similar negotiable instrument.

(c) The written instrument shall be: Payable on demand; and to the order of, or specifically endorsed without qualification to, the Presidential candidate, or his or her authorized committee. The written instrument shall contain: The full name and signature of the contributor(s); the amount and date of the contribution; and the mailing address of the contributor(s).

(1) In cases of a check drawn on a joint checking account, the contributor is considered to be the owner whose signature appears on the check.

(i) To be attributed equally to other joint tenants of the account, the check or other accompanying written document shall contain the signature(s) of the joint tenant(s). If a contribution on a joint account is to be attributed other than equally to the joint tenants, the check or other written documentation shall also indicate the amount to be attributed to each joint tenant.

(ii) In the case of a check for a contribution attributed to more than one person, where it is not apparent from the face of the check that each contributor is a joint tenant of the account, a written statement shall accompany the check stating that the contribution was made from each individual's personal funds in the amount so attributed and shall be signed by each contributor.

(iii) In the case of a contribution reattributed to a joint tenant of the account, the reattribution shall comply with the requirements of 11 CFR 110.1(k) and the documentation described in 11 CFR 110.1(1)(3), (5) and (6) shall accompany the reattributed contribution.

(2) Contributions in the form of checks drawn on an escrow or trust account are matchable contributions, provided that:

(i) The contributor has equitable ownership of the account; and

(ii) The check is accompanied by a statement, signed by each contributor to whom all or a portion of the contribution is being attributed, together with the check number, amount and date of contribution. This statement shall specify that the contributor has equitable ownership of the account and the account represents the personal funds of the contributor.

(3) Contributions in the form of checks written on partnership accounts or accounts of unincorporated associations or businesses are matchable contributions, so long as:

(i) The check is accompanied by a statement, signed by each contributor to whom all or a portion of the contribution is being attributed, together with the check number, amount and date of contribution. This statement shall specify that the contribution is made with the contributor's personal funds and that the account on which the contribution is drawn is not maintained or controlled by an incorporated entity, and

(ii) The aggregate amount of the contributions drawn on a partnership or unincorporated association or business does not exceed $1,000 to any one Presidential candidate seeking nomination.

(4) Contributions in the form of money orders, cashier's checks, or other similar negotiable instruments are matchable contributions, provided that:

(i) At the time it is initially submitted for matching, such instrument is signed by each contributor and is accompanied by a statement which specifies that the contribution was made in the form of a money order, cashier's check, traveler's check, or other similar negotiable instrument, with the contributor's personal funds;

(ii) Such statement identifies the date and amount of the contribution made by money order, cashier's check, traveler's check, or other similar negotiable instrument, the check or serial number, and the name of the issuer of the negotiable instrument; and

(iii) Such statement is signed by each contributor.

(5) Contributions in the form of the purchase price paid for the admission to any activity that primarily confers private benefits in the form of entertainment to the contributor (i.e., concerts, motion pictures) are matchable. The promotional material and tickets for the event shall clearly indicate that the ticket purchase price represents a contribution to the Presidential candidate.

(6) Contributions in the form of a purchase price paid for admission to an activity that is essentially political are matchable. An "essentially political" activity is one the principal purpose of which is political speech or discussion, such as the traditional political dinner or reception.

(7) Contributions received from a joint fundraising activity conducted in accordance with 11 CFR 9034.8 are matchable, provided that such contributions are accompanied by a copy of the joint fundraising agreement when they are submitted for matching.

§ 9034.3 Non-matchable contributions.

A contribution to a candidate other than one which meets the requirements of 11 CFR 9034.2 is not matchable. Contributions which are not matchable include, for example:

(a) In-kind contributions of real or personal property;

(b) A subscription, loan, advance, or deposit of money, or anything of value;

(c) A contract, promise, or agreement, whether or not legally enforceable, such as a pledge card or credit card transaction, to make a contribution for any such purposes (but a gift of money by written instrument is not rendered unmatchable solely because the contribution was preceded by a promise or pledge);

(d) Funds from a corporation, labor organization, government contractor, political committee as defined in 11 CFR

100.5 or any group of persons other than those under 11 CFR 9034.2(c)(3);

(e) Contributions which are made or accepted in violation of 2 U.S.C. 441a, 441b, 441c, 441e, 441f, or 441g;

(f) Contributions in the form of a check drawn on the account of a committee, corporation, union or government contractor even though the funds represent personal funds earmarked by a contributing individual to a Presidential candidate;

(g) Contributions in the form of the purchase price paid for an item with significant intrinsic and enduring value, such as a watch;

(h) Contributions in the form of the purchase price paid for or otherwise induced by a chance to participate in a raffle, lottery, or a similar drawing for valuable prizes;

(i) Contributions which are made by persons without the necessary donative intent to make a gift or made for any purpose other than to influence the result of a primary election;

(j) Contributions of currency of the United States or currency of any foreign country; and

(k) Contributions redesignated for a different election or redesignated for a legal and accounting compliance fund pursuant to 11 CFR 9003.3.

§ 9034.4 Use of contributions and matching payments.

(a) *Qualified campaign expenses*—(1) *General.* Except as provided in 11 CFR 9034.4(b)(3), all contributions received by an individual from the date he or she becomes a candidate and all matching payments received by the candidate shall be used only to defray qualified campaign expenses or to repay loans or otherwise restore funds (other than contributions which were received and expended to defray qualified campaign expenses), which were used to defray qualified campaign expenses.

(2) *Testing the waters.* Even though incurred prior to the date an individual becomes a candidate, payments made for the purpose of determining whether an individual should become a candidate, such as those incurred in conducting a poll, shall be considered qualified campaign expenses if the individual subsequently becomes a candidate and shall count against that candidate's limits under 2 U.S.C. 441a(b). See 11 CFR 100.8(b)(1).

(3) *Winding down costs.* (i) Costs associated with the termination of political activity, such as the costs of complying with the post election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries and office supplies, shall be considered qualified campaign expenses. A candidate may receive and use matching funds for these purposes either after he or she has notified the Commission in writing of his or her withdrawal from the campaign for nomination or after the date of the party's nominating convention, if he or she has not withdrawn before the convention.

(ii) If the candidate has become ineligible due to the operation of 11 CFR 9033.5(b), he or she may only receive matching funds to defray costs incurred before the candidate's date of ineligibility, for goods and services to be received before the date of ineligibility and for which written arrangement or commitment was made on or before the candidate's date of ineligibility, until the candidate is eligible to receive winding down costs under paragraph (a)(3)(i) of this section.

(4) *Taxes.* Federal income taxes paid by the committee on non-exempt function income, such as interest, dividends and sale of property, shall be considered qualified campaign expenses. These expenses shall not, however, count against the state or overall expenditure limits of 11 CFR 9035.1(a).

(b) *Non-qualified campaign expenses*—(1) *General.* The following are examples of disbursements that are not qualified campaign expenses

(2) *Excessive expenditures.* An expenditure which is in excess of any of the limitations under 11 CFR part 9035 shall not be considered a qualified campaign expense. The Commission will calculate the amount of expenditures attributable to the limitations in accordance with 11 CFR 9035.1(a)(2).

(3) *Post-ineligibility expenditures.* Any expenses incurred after a candidate's date of ineligibility, as determined under 11 CFR 9033.5, are not qualified campaign expenses except to the extent permitted under 11 CFR 9034.4(a)(3). Any expenses incurred before the candidate's date of ineligibility for goods and services to be received after the candidate's date of ineligibility are not qualified campaign expenses.

(4) *Civil or criminal penalties.* Civil or criminal penalties paid pursuant to the Federal Election Campaign Act are not qualified campaign expenses and cannot be defrayed from contributions or matching payments. Any amounts received or expended to pay such penalties shall not be considered contributions or expenditures but all amounts so received shall be subject to the prohibitions of the Act. Amounts received and expended under this section shall be reported in accordance with 11 CFR part 104.

(5) *Payments to candidate.* Payments made to the candidate by his or her committee, other than to reimburse funds advanced by the candidate for qualified campaign expenses, are not qualified campaign expenses.

(6) *Payments to other authorized committees.* Payments, including transfers and loans, to other committees authorized by the same candidate for a different election are not qualified campaign expenses.

(7) *Allocable expenses.* Payments for expenses subject to state allocation under 11 CFR 106.2 are not qualified campaign expenses if the records retained are not sufficient to permit allocation to any state, such as the failure to keep records of the date on which the expense is incurred.

(c) *Repayments.* Repayments may be made only from the following sources: Personal funds of the candidate (without regard to the limitations of 11 CFR 9035.2(a)), contributions and matching payments in the committee's account(s), and any additional funds raised subject to the limitations and prohibitions of the Federal Election Campaign Act of 1971, as amended.

(d) *Transfers to other campaigns*—(1) *Other Federal offices.* If a candidate has received matching funds and is simultaneously seeking nomination or election to another Federal office, no transfer of funds between his or her principal campaign committees or authorized committees may be made. See 2 U.S.C. 441a(a)(5)(C) and 11 CFR 110.3(c)(5) and 110.8(d). A candidate will be considered to be simultaneously seeking nomination or election to another Federal office if he or she is seeking nomination or election to such Federal office under 11 CFR 110.3(c)(5).

(2) *General election.* If a candidate has received matching funds, all transfers from the candidate's primary election account to a legal and accounting compliance fund established for the general election must be made in accordance with 11 CFR 9003.3(a)(1) (ii) and (iii).

§ 9034.5 Net outstanding campaign obligations.

(a) Within 15 calendar days after the candidate's date of ineligibility, as determined under 11 CFR 9033.5, the candidate shall submit a statement of net outstanding campaign obligations. The candidate's net outstanding campaign obligations under this section equal the difference between paragraphs (a) (1) and (2) of this section:

(1) The total of all outstanding obligations for qualified campaign expenses as of the candidate's date of ineligibility as determined under 11 CFR 9033.5, plus estimated necessary winding down costs as defined under 11 CFR 9034.4(a)(3), less

(2) The total of:

(i) Cash on hand as of the close of business on the last day of eligibility (including all contributions dated on or before that date whether or not submitted for matching; currency; balances on deposit in banks; savings and loan institutions; and other depository institutions; traveler's checks; certificates of deposit; treasury bills; and any other committee investments valued at fair market value);

(ii) The fair market value of capital assets and other assets on hand; and

(iii) Amounts owed to the committee in the form of credits, refunds of deposits, returns, receivables, or rebates of qualified campaign expenses; or a commercially reasonable amount based on the collectibility of those credits, returns, receivables or rebates.

(b) The amount submitted as the total of outstanding campaign obligations under paragraph (a)(1) of this section shall not include any accounts payable for non-qualified campaign expenses nor any amounts determined or anticipated to be required as a repayment under 11 CFR part 9038 or any amounts paid to secure a surety bond under 11 CFR 9038.5(c).

(c)(1) *Capital assets.* For purposes of this section, the term "capital asset" means any property used in the operation of the campaign whose purchase price exceeded $2000 when acquired by the committee. Property that must be valued as capital assets under this section includes, but is not limited to, office equipment, furniture, vehicles and fixtures acquired for use in the operation of the candidate's campaign, but does not include property defined as "other assets" under 11 CFR 9034.5(c)(2). A list of all capital assets shall be maintained by the Committee in accordance with 11 CFR 9033.11(d). The fair market value of capital assets may be considered to be the total original cost of such items when acquired less 40%, to account for depreciation, except that items acquired after the date of ineligibility must be valued at their fair market value on the date acquired. If the candidate wishes to claim a higher depreciation percentage for an item, he or she must list that capital asset on the statement separately and demonstrate, through documentation, the fair market value of each such asset.

(2) *Other assets.* The term "other assets" means any property acquired by the committee for use in raising funds or as collateral for campaign loans. "Other assets" must be included on the candidate's statement of net outstanding campaign obligations if the aggregate value of such assets exceeds $5000. The value of "other assets" shall be determined by the fair market value of each item on the candidate's date of ineligibility or on the date the item is acquired if acquired after the date of ineligibility. A list of other assets shall be maintained by the committee in accordance with 11 CFR 9033.11(d)(2).

(d) *Collectibility of accounts receivable.* If the committee determines that an account receivable of $500 or more, including any credit, refund, return or rebate, is not collectible in whole or in part, the committee shall demonstrate through documentation that the determination was commercially reasonable. The documentation shall include records showing the original amount of the account receivable, copies of correspondence and memoranda of communications with the debtor showing attempts to collect the amount due, and an explanation of how the lesser amount or full writeoff was determined.

(e) Contributions received from joint fundraising activities conducted under 11 CFR 9034.8 may be used to pay a candidate's outstanding campaign obligations.

(1) Such contributions shall be deemed monies available to pay outstanding campaign obligations as of the date these funds are received by the fundraising representative committee and shall be included in the candidate's statement of net outstanding campaign obligations.

(2) The amount of money deemed available to pay a candidate's net outstanding campaign obligations will equal either—

(i) An amount calculated on the basis of the predetermined allocation formula, as adjusted for 2 U.S.C. 441a limitations; or

(ii) If a candidate receives an amount greater than that calculated under 11 CFR 9034.5 (e) (2) (i), the amount actually received.

(f) The candidate shall submit a revised statement of net outstanding campaign obligations with each submission for matching funds payments filed after the candidate's date of ineligibility. The revised statement shall reflect the financial status of the committee as of the close of business on the last business day preceding the date of submission for matching funds. The revised statement shall also contain a brief explanation of each change in the committee's assets and obligations from the previous statement.

(g) (1) If the Commission receives information indicating that substantial assets of the candidate's authorized committee(s) have been undervalued or not included in the statement or that the amount of outstanding campaign obligations has been otherwise overstated in relation to committee assets, the Commission may decide to temporarily suspend further matching payments pending a final determination whether the candidate is entitled to receive all or a portion of the matching funds requested.

(2) In making a determination under 11 CFR 9034.5(g)(1), the Commission will follow the procedures for initial and final determinations under 11 CFR 9033.10 (b) and (c). The Commission will notify the candidate of its initial determination within 15 business days after receipt of the candidate's statement of net outstanding campaign obligations. Within 15 business days after service of the Commission's notice, the candidate may submit written legal or factual materials to demonstrate that he or she has net outstanding campaign obligations that entitle the campaign to further matching payments.

(3) If the candidate demonstrates that the amount of outstanding campaign obligations still exceeds committee assets, he or she may continue to receive matching payments.

(4) Following a final determination under this section, the candidate may file a petition for rehearing in accordance with 11 CFR 9038.5(a).

§ 9034.6 Reimbursements for transportation and services made available to media personnel.

(a) If an authorized committee incurs expenditures for transportation, ground services and facilities (including air travel, ground transportation, housing, meals, telephone service, and typewriters) made available to media personnel, Secret Service personnel or national security staff, such expenditures will be considered qualified campaign expenses subject to the overall expenditure limitations of 11 CFR 9035.1(a).

(b) If reimbursement for such expenditures is received by a committee, the amount of such reimbursement for each media representative shall not exceed either: The media representative's pro rata share of the actual cost of the transportation and services made available; or a reasonable estimate of

the media representative's pro rata share of the actual cost of the transportation and services made available. A media representative's pro rata share shall be calculated by dividing the total cost of the transportation and services by the total number of individuals to whom such transportation and services are made available. For purposes of this calculation, the total number of individuals shall include campaign staff, media personnel, Secret Service personnel, national security staff and any other individuals to whom such transportation and services are made available. The total amount of reimbursements received from a media representative under this section shall not exceed the actual pro rata cost of the transportation and services made available to that media representative by more than 10%.

(c) The total amount paid by an authorized committee for the cost of transportation or for ground services and facilities shall be reported as an expenditure in accordance with 11 CFR 104.3(b)(2)(i). Any reimbursement received by such committee for transportation or ground services and facilities shall be reported in accordance with 11 CFR 104.3(a)(3)(ix).

(d) (1) The Committee may deduct from the amount of expenditures subject to the overall expenditure limitation of 11 CFR 9035.1(a) the amount of reimbursements received in payment for the actual cost of transportation and services described in paragraph (a) of this section. This deduction shall not exceed the amount the committee expended for the actual cost of transportation and services provided. The committee may also deduct from the overall expenditure limitation an additional amount of reimbursements received equal to 3% of the actual cost of transportation and services provided under this section as the administrative cost to the committee of providing such services and seeking reimbursement for them. If the committee has incurred higher administrative costs in providing these services, the committee must document the total cost incurred for such services in order to deduct a higher amount of reimbursements received from the overall expenditure limitation. Amounts paid by the committee for transportation, services and administrative costs for which no reimbursement is received will be considered qualified campaign expenses subject to the overall expenditure limitation in accordance with paragraph (a) of this section.

(2) For the purposes of this section, "administrative costs" shall include all costs incurred by the committee for making travel arrangements and for seeking reimbursements, whether performed by committee staff or independent contractors.

§ 9034.7 Allocation of travel expenditures.

(a) Notwithstanding the provisions of 11 CFR part 106, expenditures for travel relating to the campaign of a candidate seeking nomination for election to the office of President by any individual, including a candidate, shall, pursuant to the provisions of 11 CFR 9034.7(b), be qualified campaign expenses and be reported by the candidate's authorized committee(s) as expenditures.

(b) (1) For a trip which is entirely campaign-related, the total cost of the trip shall be a qualified campaign expense and a reportable expenditure.

(2) For a trip which includes campaign-related and non-campaign related stops, that portion of the cost of the trip allocable to campaign activity shall be a qualified campaign expense and a reportable expenditure. Such portion shall be determined by calculating what the trip would have cost from the point of origin of the trip to the first campaign-related stop and from that stop through each subsequent campaign-related stop, back to the point of origin. If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related.

(3) For each trip, an itinerary shall be prepared and such itinerary shall be made available for Commission inspection.

(4) For trips by government conveyance or by charter, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign-related, shall be made available for Commission inspection.

(5) If any individual, including a candidate, uses government conveyance or accommodations paid for by a government entity for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to:

(i) The first class commercial air fare plus the cost of other services, in the case of travel to a city served by a regularly scheduled commercial service; or

(ii) The commercial charter rate plus the cost of other services, in the case of travel to a city not served by a regularly scheduled commercial service.

(6) Travel expenses of a candidate's spouse and family when accompanying the candidate on campaign-related travel may be treated as qualified campaign expenses and reportable expenditures. If the spouse or family members conduct campaign-related activities, their travel expenses will be treated as qualified campaign expenses and reportable expenditures.

(7) If any individual, including a candidate, incurs expenses for campaign-related travel, other than by use of government conveyance or accommodations, an amount equal to that portion of the actual cost of the conveyance or accommodations which is allocable to all passengers, including the candidate, traveling for campaign purposes will be a qualified campaign expense and shall be reported by the committee as an expenditure.

(i) If the trip is by charter, the actual cost for each passenger shall be determined by dividing the total operating cost for the charter by the total number of passengers transported. The amount which is a qualified campaign expense and a reportable expenditure shall be calculated in accordance with the formula set forth at 11 CFR 9034.7(b)(2) on the basis of the actual cost per passenger multiplied by the number of passengers traveling for campaign purposes.

(ii) If the trip is by non-charter commercial transportation, the actual cost shall be calculated in accordance with the formula set forth at 11 CFR 9034.7(b)(2) on the basis of the commercial fare. Such actual cost shall be a qualified campaign expense and a reportable expenditure.

§ 9034.8 Joint fundraising.

(a) *General*—(1) *Permissible participants.* Presidential primary candidates who receive matching funds under this subchapter may engage in joint fundraising with other candidates, political committees or unregistered committees or organizations.

(2) *Use of funds.* Contributions received as a result of a candidate's participation in a joint fundraising activity under this section may be—

(i) Submitted for matching purposes in accordance with the requirements of 11 CFR 9034.2 and the Federal Election Commission's Guideline for Presentation in Good Order;

(ii) Used to pay a candidate's net outstanding campaign obligations as provided in 11 CFR 9034.5;

(iii) Used to defray qualified campaign expenses;

(iv) Used to defray exempt legal and accounting costs; or

(v) If in excess of a candidate's net outstanding campaign obligations or expenditure limit, used in any manner

consistent with 11 CFR 113.2, including repayment of funds under 11 CFR part 9038.

(b) *Fundraising representatives*—(1) *Establishment or selection of fundraising representative.* The participants in a joint fundraising effort under this section shall either establish a separate committee or select a participating committee, to act as fundraising representative for all participants. The fundraising representative shall be a reporting political committee and an authorized committee of each candidate. If the participants establish a separate committee to act as the fundraising representative, the separate committee shall not be a participant in any other joint fundraising effort.

(2) *Separate fundraising committee as fundraising representative.* A separate fundraising committee established by the participants to act as fundraising representative for all participants shall—

(i) Be established as a reporting political committee under 11 CFR 100.5;

(ii) Collect contributions;

(iii) Pay fundraising costs from gross proceeds and funds advanced by participants; and

(iv) Disburse net proceeds to each participant.

(3) *Participating committee as fundraising representative.* A participant selected to act as fundraising representative for all participants shall—

(i) Be a political committee as defined in 11 CFR 100.5;

(ii) Collect contributions; however, other participants may also collect contributions and then forward them to the fundraising representative as required by 11 CFR 102.8;

(iii) Pay fundraising costs from gross proceeds and funds advanced by participants; and

(iv) Disburse net proceeds to each participant.

(4) *Independent fundraising agent.* The participants or the fundraising representative may hire a commercial fundraising firm or other agent to assist in conducting the joint fundraising activity. In that case, however, the fundraising representative shall still be responsible for ensuring that the recordkeeping, reporting and documentation requirements set forth in this subchapter are met.

(c) *Joint fundraising procedures.* Any joint fundraising activity under this section shall be conducted in accordance with the following requirements:

(1) *Written agreement.* The participants in a joint fundraising activity shall enter into a written agreement, whether or not all participants are political committees under 11 CFR 100.5. The written agreement shall identify the fundraising representative and shall state a formula for the allocation of fundraising proceeds. The formula shall be stated as the percentage of each contribution received to be allocated to each participant. The fundraising representative shall retain the written agreement for a period of three years and shall make it available to the Commission on request.

(2) *Funds advanced for fundraising costs.* (i) Except as provided in 11 CFR 9034.8(c)(2)(ii), the amount of funds advanced by each participant for fundraising costs shall be in proportion to the allocation formula agreed upon under 11 CFR 9034.8(c)(1).

(ii) A participant may advance more than its proportionate share of the fundraising costs; however, the amount advanced which is in excess of the participant's proportionate share shall not exceed the amount that participant could legally contribute to the remaining participants. See 11 CFR 102.12(c)(2), part 110, and 9034.4(b)(6).

(3) *Fundraising notice.* In addition to any notice required under 11 CFR 110.11, a joint fundraising notice shall be included with every solicitation for contributions.

(i) This notice shall include the following information:

(A) The names of all committees participating in the joint fundraising activity whether or not such committees are political committees under 11 CFR 100.5;

(B) The allocation formula to be used for distributing joint fundraising proceeds;

(C) A statement informing contributors that, notwithstanding the stated allocation formula, they may designate their contributions for a particular participant or participants; and

(D) A statement informing contributors that the allocation formula may change if a contributor makes a contribution which would exceed the amount that contributor may give to any participant.

(ii) If one or more participants engage in the joint fundraising activity solely to satisfy outstanding debts, the notice shall also contain a statement informing contributors that the allocation formula may change if a participant receives sufficient funds to pay its outstanding debts.

(4) *Separate depository account.* (i) The participants or the fundraising representative shall establish a separate depository account to be used solely for the receipt and disbursement of the joint fundraising proceeds. All contributions deposited into the separate depository account must be permissible under title 2, United States Code. Each political committee shall amend its Statement of Organization to reflect the account as an additional depository.

(ii) The fundraising representative shall deposit all joint fundraising proceeds in the separate depository account within ten days of receipt as required by 11 CFR 103.3. The fundraising representative may delay distribution of the fundraising proceeds to the participants until all contributions are received and all expenses are paid.

(iii) For contribution reporting and limitation purposes, the date of receipt of a contribution by a participating political committee is the date that the contribution is received by the fundraising representative. The fundraising representative shall report contributions in the reporting period in which they are received. Participating political committees shall report joint fundraising proceeds in accordance with 11 CFR 9034.8(c)(9) when such funds are received from the fundraising representative.

(5) *Recordkeeping requirements.* (i) The fundraising representative and participating committees shall screen all contributions received to insure that the prohibitions and limitations of 11 CFR parts 110 and 114 are observed. Participating political committees shall make their contributor records available to the fundraising representative to enable the fundraising representative to carry out its duty to screen contributions.

(ii) The fundraising representative shall collect and retain contributor information with regard to gross proceeds as required under 11 CFR 102.8 and shall also forward such information to participating political committees.

(iii) The fundraising representative shall retain the records required under 11 CFR 9033.11 regarding fundraising disbursements for a period of three years. Commercial fundraising firms or agents shall forward such information to the fundraising representative.

(6) *Contribution limitations.* Except to the extent that the contributor has previously contributed to any of the participants, a contributor may make a contribution to the joint fundraising effort which contribution represents the total amount that the contributor could contribute to all of the participants under the applicable limits of 11 CFR 110.1 and 110.2.

(7) *Allocation of gross proceeds.* (i) The fundraising representative shall allocate proceeds according to the formula stated in the fundraising agreement. Each contribution received shall be allocated among the participants in accordance with the allocation formula, unless the circumstances described in paragraphs (c)(7) (ii), (iii) or (iv) of this section apply. Funds may not be distributed or reallocated so as to maximize the matchability of the contributions.

(ii) If distribution according to the allocation formula extinguishes the debts of one or more participants or if distribution under the formula results in a violation of the contribution limits of 11 CFR 110.1(b), the fundraising representative may reallocate the surplus fund. The fundraising representative shall not reallocate funds so as to allow candidates seeking to extinguish outstanding debts to rely on the receipt of matching funds to pay the remainder of their debts; rather, all funds to which a participant is entitled under the allocation formula shall be deemed funds available to pay the candidate's outstanding campaign obligations as provided in 11 CFR 9034.5(c).

(iii) Reallocation shall be based upon the remaining participant's proportionate shares under the allocation formula. If reallocation results in a violation of a contributor's limit under 11 CFR 110.1, the fundraising representative shall return to the contributor the amount of the contribution that exceeds the limit.

(iv) Earmarked contributions which exceed the contributor's limit to the designated participant under 11 CFR part 110 may not be reallocated by the fundraising representative without the prior written permission of the contributor. A written instrument made payable to one of the participants shall be considered an earmarked contribution unless a written statement by the contributor indicates that it is intended for inclusion in the general proceeds of the fundraising activity.

(8) *Allocation of expenses and distribution of net proceeds.* (i) If participating committees are not affiliated as defined in 11 CFR 110.3 prior to the joint fundraising activity and are not committees of the same political party:

(A) After gross contributions are allocated among the participants under 11 CFR 9034.8(c)(7), the fundraising representative shall calculate each participant's share of expenses based on the percentage of the total receipts each participant has been allocated. To calculate each participant's net proceeds, the fundraising representative shall subtract the participant's share of expenses from the amount that participant has been allocated from gross proceeds.

(B) A participant may only pay expenses on behalf of another participant subject to the contribution limits of 11 CFR part 110. See also 11 CFR 9034.4(b)(6).

(C) The expenses from a series of fundraising events or activities shall be allocated among the participants on a per-event basis regardless of whether the participants change or remain the same throughout the series.

(ii) If participating committees are affiliated as defined in 11 CFR 110.3 prior to the joint fundraising activity or if participants are party committees of the same political party, expenses need not be allocated among those participants. Payment of such expenses by an unregistered committee or organization on behalf of an affiliated political committee may cause the unregistered organization to become a political committee.

(iii) Payment of expenses may be made from gross proceeds by the fundraising representative.

(9) *Reporting of receipts and disbursements*—(i) *Reporting receipts.* (A) The fundraising representative shall report all funds received in the reporting period in which they are received. Each Schedule A filed by the fundraising representative under this section shall clearly indicate that the contributions reported on that schedule represent joint fundraising proceeds.

(B) After distribution of net proceeds, each participating political committee shall report its share of net proceeds received as a transfer-in from the fundraising representative. Each participating political committee shall also file a memo Schedule A itemizing its share of gross receipts as contributions from original contributors to the extent required under 11 CFR 104.3(a).

(ii) *Reporting disbursements.* The fundraising representative shall report all disbursements in the reporting period in which they are made. Each participant shall report in a memo Schedule B his or her total allocated share of these disbursements in the same reporting period in which net proceeds are distributed and reported and include the amount on page 4 of Form 3–F, under "Expenditures Subject to Limit."

§ 9034.9 Sale of assets acquired for fundraising purposes.

(a) *General.* A candidate may sell assets donated to the candidate's authorized committee(s) or otherwise acquired for fundraising purposes (See 11 CFR 9034.5(c)(2)), subject to the limitations and prohibitions of title 2, United States Code and 11 CFR parts 110 and 114.

(b) *Sale after end of matching payment period.* A candidate whose outstanding debts exceed his or her cash on hand after the end of the matching payment period as determined under 11 CFR 9032.6 may dispose of assets acquired for fundraising purposes in a sale to a wholesaler or other intermediary who will in turn sell such assets to the public, provided that the sale to the wholesaler or intermediary is an arms-length transaction. Sales made under this subsection will not be subject to the limitations and prohibitions of title 2, United States Code and 11 CFR parts 110 and 114.

PART 9035—EXPENDITURE LIMITATIONS

Sec.

9035.1 Campaign expenditure limitation.
9035.2 Limitation on expenditures from personal or family funds.

Authority: 26 U.S.C. 9035 and 9039(b).

§ 9035.1 Campaign expenditure limitation.

(a)(1) No candidate or his or her authorized committee(s) shall knowingly incur expenditures in connection with the candidate's campaign for nomination, which expenditures, in the aggregate, exceed $10,000,000 (as adjusted under 2 U.S.C. 441a(c)), except that the aggregate expenditures by a candidate in any one State shall not exceed the greater of: 16 cents (as adjusted under 2 U.S.C. 441a(c)) multiplied by the voting age population of the State (as certified under 2 U.S.C. 441a(e)); or $200,000 (as adjusted under 2 U.S.C. 441a(c)).

(2) The Commission will calculate the amount of expenditures attributable to the overall expenditure limit or to a particular state using the full amounts originally charged for goods and services rendered to the committee and not the amounts for which such obligations were settled and paid, unless the committee can demonstrate that the lower amount paid reflects a reasonable settlement of a bona fide dispute with the creditor.

(b) Each candidate receiving or expecting to receive matching funds under this subchapter shall also allocate his or her expenditures in accordance with the provisions of 11 CFR 106.2.

(c)(1) A candidate may exclude from the overall expenditure limitation of 11 CFR 9035.1 an amount equal to 10 percent of all salaries and overhead

expenditures as an exempt legal and accounting compliance cost under 11 CFR 100.8(b)(15). For purposes of this section overhead expenditures include, but are not limited to rent, utilities, office equipment, furniture, supplies, and telephone base service charges as set forth at 11 CFR 106.2(b)(2)(iii)(A).

(i) If the candidate wishes to claim a larger compliance exemption for any person, the candidate shall establish allocation percentages for each individual who spends all or a portion of his or her time to perform duties which are considered compliance. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance and the percentage of time each person spends on such activity. Alternatively, the Commission's Financial Control and Compliance Manual for Presidential Primary Candidates contains some other accepted allocation methods for calculating a compliance exemption.

(ii) Exempt compliance costs are those legal and accounting costs incurred solely to ensure compliance with 26 U.S.C. 9031 *et seq.*, 2 U.S.C. 431 *et seq.*, and 11 CFR chapter I, including the costs of preparing matching fund submissions and the costs of producing, delivering and explaining computerized information and materials provided pursuant to 11 CFR 9033.12 and explaining the operation of the computer system's software. The costs of preparing matching fund submissions shall be limited to those functions not required for general contribution processing and shall include the costs associated with: Generating the matching fund submission list and the matching fund computer tape or other form of magnetic media for each submission, edits of the contributor data base that are related to preparing a matching fund submission, making photocopies of contributor checks, and seeking additional documentation from contributors for matching purposes. The costs associated with general contribution processing shall include those normally performed for fundraising purposes, or for compliance with the recordkeeping and reporting requirements of 11 CFR part 100 *et seq.*, such as data entry, batching contributions for deposit, and preparation of FEC reports.

(2) A candidate may exclude from the overall expenditure limitation of 11 CFR 9035.1 the amount of exempt fundraising costs specified in 11 CFR 100.8(b)(21)(iii).

(d) The expenditure limitations of 11 CFR 9035.1 shall not apply to a candidate who does not receive matching funds at any time during the matching payment period.

§ 9035.2 Limitation on expenditures from personal or family funds.

(a)(1) No candidate who has accepted matching funds shall knowingly make expenditures from his or her personal funds, or funds of his or her immediate family, in connection with his or her campaign for nomination for election to the office of President which exceed $50,000, in the aggregate. This section shall not operate to prohibit any member of the candidate's immediate family from contributing his or her personal funds to the candidate, subject to the limitations of 11 CFR part 110. The provisions of this section also shall not limit the candidate's liability for, nor the candidate's ability to pay, any repayments required under 11 CFR part 9038. If the candidate or his or her committee knowingly incurs expenditures in excess of the limitations of 11 CFR 110.8(a), the Commission may seek civil penalties under 11 CFR part 111 in addition to any repayment determinations made on the basis of such excessive expenditures.

(2) Expenditures made using a credit card for which the candidate is jointly or solely liable will count against the limits of this section to the extent that the full amount due, including any finance charge, is not paid by the committee within 60 days after the closing date of the billing statement on which the charges first appear. For purposes of this section, the "closing date" shall be the date indicated on the billing statement which serves as the cutoff date for determining which charges are included on that billing statement.

(b) For purposes of this section, the term "immediate family" means a candidate, spouse, and any child, parent, grandparent, brother, half-brother, sister, or half-sister of the candidate, and the spouses of such persons.

(c) For purposes of this section, "personal funds" has the same meaning as specified in 11 CFR 110.10.

PART 9036—REVIEW OF SUBMISSION AND CERTIFICATION OF PAYMENTS BY COMMISSION

Sec.

9036.1 Threshold submission.
9036.2 Additional submissions for matching fund payments.
9036.3 Submission errors and insufficient documentation.
9036.4 Commission review of submissions.
9036.5 Resubmissions.
9036.6 Continuation of certification.

Authority: 26 U.S.C. 9036 and 9039(b).

§ 9036.1 Threshold submission.

(a) *Time for submission of threshold submission.* At any time after January 1 of the year immediately preceding the Presidential election year, the candidate may submit a threshold submission for matching fund payments in accordance with the format for such submissions set forth in 11 CFR 9036.1(b). The candidate may submit the threshold submission simultaneously with or subsequent to his or her submission of the candidate agreement and certifications required by 11 CFR 9033.1 and 9033.2.

(b) *Format for threshold submission.* (1) For each State in which the candidate certifies that he or she has met the requirements of the certifications in 11 CFR 9033.2(b), the candidate shall submit an alphabetical list of contributors showing:

(i) Each contributor's full name and residential address;

(ii) The occupation and name of employer for individuals whose aggregate contributions exceed $200 in the calendar year;

(iii) The date of deposit of each contribution into the designated campaign depository;

(iv) The full dollar amount of each contribution submitted for matching purposes;

(v) The matchable portion of each contribution submitted for matching purposes;

(vi) The aggregate amount of all matchable contributions from that contributor submitted for matching purposes;

(vii) A notation indicating which contributions were received as a result of joint fundraising activities.

(2) The candidate shall submit a full-size photocopy of each check or written instrument and of supporting documentation in accordance with 11 CFR 9034.2 for each contribution that the candidate submits to establish eligibility for matching funds. For purposes of the threshold submissions, the photocopies shall be segregated alphabetically by contributor within each State, and shall be accompanied by and referenced to copies of the relevant deposit slips.

(3) The candidate shall submit bank documentation, such as bank-validated deposit slips or unvalidated deposit slips accompanied by the relevant bank statements, which indicate that the contributions submitted were deposited into a designated campaign depository.

(4) For each State in which the candidate certifies that he or she has met the requirements to establish eligibility, the candidate shall submit a listing, alphabetically by contributor, of all checks returned by the bank to date

as unpaid (e.g., stop payments, non-sufficient funds) regardless of whether the contribution was submitted for matching. This listing shall be accompanied by a full-size photocopy of each unpaid check, and copies of the associated debit memo and bank statement.

(5) The candidate shall submit all contributions in accordance with the Federal Election Commission's Guideline for Presentation in Good Order.

(6) Contributions that are not submitted in compliance with this section shall not count toward the threshold amount.

(c) *Threshold certification by Commission.* (1) After the Commission has determined under 11 CFR 9033.4 that the candidate has satisfied the eligibility and certification requirements of 11 CFR 9033.1 and 9033.2, the Commission will notify the candidate in writing that the candidate is eligible to receive primary matching fund payments as provided in 11 CFR part 9034.

(2) If the Commission makes a determination of a candidate's eligibility under 11 CFR 9036.1(a) in a Presidential election year, the Commission shall certify to the Secretary, within 10 calendar days after the Commission has made its determination, the amount to which the calendar is entitled.

(3) If the Commission makes a determination of a candidate's eligibility under 11 CFR 9036.1(a) in the year preceding the Presidential election year, the Commission will notify the candidate that he or she is eligible to receive matching fund payments; however, the Commission's determination will not result in a payment of funds to the candidate until after January 1 of the Presidential election year.

§ 9036.2 Additional submissions for matching fund payments.

(a) *Time for submission of additional submissions.* The candidate may submit additional submissions for payments to the Commission on dates to be determined and published by the Commission.

(b) *Format for additional submissions.* The candidate may obtain additional matching fund payments subsequent to the Commission's threshold certification and payment of primary matching funds to the candidate by filing an additional submission for payment. All additional submissions for payments filed by the candidate shall be made in accordance with the Federal Election Commission's Guideline for Presentation in Good Order.

(1) The first submission for matching funds following the candidate's threshold submission shall contain all the matchable contributions included in the threshold submission and any additional contributions to be submitted for matching in that submission. This submission shall contain all the information required for the threshold submission except that:

(i) The candidate is not required to resubmit the candidate agreement and certifications of 11 CFR 9033.1 and 9033.2;

(ii) The candidate is required to submit an alphabetical list of contributors, but not segregated by State as required in the threshold submission;

(iii) The candidate is required to submit a listing, alphabetical by contributor, of all checks returned unpaid, but not segregated by State as required in the threshold submission;

(iv) The occupation and employer's name need not be disclosed on the contributor list for individuals whose aggregate contributions exceed $200 in the calender year, but such information is subject to the recordkeeping and reporting requirements of 2 U.S.C. 432(c)(3), 434 (b)(3)(A) and 11 CFR 102.9(a)(2), 104.3(a)(4)(i); and

(v) The photocopies of each check or written instrument and of supporting documentation shall either be alphabetized and referenced to copies of the relevant deposit slip, but not segregated by State as required in the threshold submission; or such photocopies may be batched in deposits of 50 contributions or less and cross-referenced by deposit number and sequence number within each deposit on the contributor list.

(2) Following the first submission under 11 CFR 9036.2(b)(1), candidate may request additional matching funds on dates prescribed by the Commission by making a letter request in lieu of making a full submission as required under 11 CFR 9036.2(b)(1), however, letter requests may not be submitted after the candidate's date of ineligibility. Letter requests shall state an amount of matchable contributions not previously submitted for matching and shall provide bank documentation, such as bank-validated deposit slips or unvalidated deposit slips accompanied by the relevant bank statement, demonstrating that the committee has received the funds for which matching payments are requested. The amount requested for matching may include contributions received up to the last business day preceding the date of the request. On the next submission date as designated for that committee after a letter of request has been made, the committee shall submit the documentation required under 11 CFR 9036.2(b)(1) for all contributions included in the letter request, as well as any contributions submitted for matching in that full submission. A committee may not submit two consecutive letter requests, but the committee may choose to make a full regular submission on a date designated by the Commission as a letter request date for that committee.

(c) *Certification of additional payments by Commission.* (1)(i) When a candidate who is eligible under 11 CFR 9033.4 submits an additional submission for payment in the Presidential election year, the Commission may certify to the Secretary within 5 business days after the Commission's receipt of information submitted by the candidate under 11 CFR 9036.2(a), an amount based on the holdback procedure described in the Federal Election Commission's Guideline for Presentation in Good Order. If the candidate makes a letter request, the Commission may certify to the Secretary an amount which is less than that requested based upon the ratio of verified matchable contributions to total deposits for that committee in the committee's last regular submission.

(ii) The Commission will certify to the Secretary any additional amount to which the eligible candidate is entitled, if any, within 20 business days after the Commission's receipt of information submitted by the candidate under 11 CFR 9036(a), unless the projected dollar value of the nonmatchable contributions contained in the submission exceeds 10% of the amount requested. In the latter case, the Commission will certify any additional amount within 25 business days. See 11 CFR 9036.4 for Commission procedures for certification of additional payments.

(2) After a candidate's date of ineligibility, the Commission will certify to the Secretary, within 20 business days after receipt of a submission by the candidate under 11 CFR 9036.2(a), an amount to which the ineligible candidate is entitled in accordance with 11 CFR 9034.1(b), unless the projected dollar value of the nonmatchable contributions contained in the submission exceeds 10% of the amount requested. In the latter case, the Commission will certify any amount to which the ineligible candidate is entitled within 25 business days.

(d) *Additional submissions submitted in non-Presidential election year.* The candidate may submit additional contributions for review during the year preceding the presidential election year; however, the amount of each submission

made during this period must exceed $50,000. Additional submissions filed by a candidate in a non-Presidential election year will not result in payment of matching funds to the candidate until after January 1 of the Presidential election year.

§ 9036.3 Submission of errors and insufficient documentation.

Contributions which are otherwise matchable may be rejected for matching purposes because of submission of errors or insufficient supporting documentation. Contributions, other than those defined in 11 CFR 9034.3 or in the form of money orders, cashier's checks, or similar negotiable instruments, may become matchable if there is a proper resubmission in accordance with 11 CFR 9036.5 and 9036.6. Insufficient documentation or submission errors include but are not limited to:

(a) Discrepancies in the written instrument, such as:

(1) Instruments drawn on other than personal accounts of contributors and not signed by the contributing individual;

(2) Signature discrepancies; and

(3) Lack of the contributor's signature, the amount or date of the contribution, or the listing of the committee or candidate as payee.

(b) Discrepancies between listed contributions and the written instrument or supporting documentation, such as:

(1) The listed amount requested for matching exceeds the amount contained on the written instrument;

(2) A written instrument has not been submitted to support a listed contribution;

(3) The submitted written instrument cannot be associated either by accountholder identification or signature with the listed contributor; or

(4) A discrepancy between the listed contribution and the supporting bank documentation or the bank documentation is omitted.

(c) Discrepancies within or between contributor lists submitted, such as:

(1) The address of the contributor is omitted or incomplete or the contributor's name is alphabetized incorrectly, or more than one contributor is listed per item;

(2) A discrepancy in aggregation within or between submissions which results in a request that more than $250 be matched for that contributor, or a listing of a contributor more than once within the same submission; or

(3) A written instrument has been previously submitted and matched in full or is listed twice in the same submission.

(d) The omission of information, supporting statements, or documentation required by 11 CFR 9034.2.

§ 9036.4 Commission review of submissions.

(a) *Non-acceptance of submission for review of matchability.* The Commission will make an initial review of each submission made under 11 CFR part 9036 to determine if it substantially meets the format requirements of 11 CFR 9036.1(b) and 9036.2(b) and the Federal Election Commission's Guideline for Presentation in Good Order. If the Commission determines that a submission does not substantially meet these requirements, it will not review the matchability of the contributions contained therein. In such a case, the Commission will return the submission to the candidate and request that it be corrected in accordance with the format requirements. If the candidate makes a corrected submission within 3 business days after the Commission's return of the original, the Commission will review the corrected submission prior to the next regularly-scheduled submission date. Corrected submissions made after this three-day period will be reviewed subsequent to the next regularly-scheduled submission date.

(b) *Acceptance of submission for review of matchability.* If the Commission determines that a submission made under 11 CFR part 9036 satisfies the format requirements of 11 CFR 9036.1(b) and 9036.2(b) and the Federal Election Commission's Guideline for Presentation in Good Order, it will review the matchability of the contributions contained therein. The Commission, in conducting its review, may utilize statistical sampling techniques. Based on the results of its review, the Commission may calculate a matchable amount for the submission which is less than the amount requested by the candidate. If the Commission certifies for payment to the Secretary an amount that is less than the amount requested by the candidate in a particular submission, or reduces the amount of a subsequent certification to the Secretary by adjusting a previous certification made under 11 CFR 9036.2(c)(1), the Commission will notify the candidate in writing of the following:

(1) The amount of the difference between the amount requested and the amount to be certified by the Commission;

(2) The amount of each contribution and the corresponding contributor's name for each contribution that the Commission has rejected as nonmatchable and the reason that it is not matchable; or if statistical sampling is used, the estimated amount of contributions by type and the reason for rejection;

(3) The amount of contributions that have been determined to be matchable and that the Commission will certify to the Secretary for payment; and

(4) A statement that the candidate may supply the Commission with additional documentation or other information in the resubmission of any rejected contribution under 11 CFR 9036.5 in order to show that a rejected contribution is matchable under 11 CFR 9034.2.

(c) *Adjustment of amount to be certified by Commission.* The candidate shall notify the Commission as soon as possible if the candidate or the candidate's authorized committee(s) has knowledge that a contribution submitted for matching does not qualify under 11 CFR 9034.2 as a matchable contribution, such as a check returned to the committee for insufficient funds or a contribution that has been refunded, so that the Commission may properly adjust the amount to be certified for payment.

(d) *Commission audit of submissions.* The Commission may determine, for the reasons stated in 11 CFR part 9039, that an audit and examination of contributions submitted for matching payment is warranted. The audit and examination shall be conducted in accordance with the procedures of 11 CFR part 9039.

§ 9036.5 Resubmissions.

(a) *Alternative resubmission methods.* Upon receipt of the Commission's notice of the results of the submission review pursuant to 11 CFR 9036.4(b), a candidate may choose to:

(1) Resubmit the entire submission; or

(2) Make a written request for the identification of the specific contributions that were rejected for matching, and resubmit those specific contributions.

(b) *Time for presentation of resubmissions.* If the candidate chooses to resubmit any contributions under 11 CFR 9036.5(a), the contributions shall be resubmitted on dates to be determined and published by the Commission. The candidate may not make any resubmissions later than the first Tuesday in September of the year following the Presidential election year.

(c) *Format for resubmissions.* All resubmissions filed by the candidate shall be made in accordance with the Federal Election Commission's Guideline for Presentation in Good Order. In making a presentation of

resubmitted contributions, the candidate shall follow the format requirements as specified in 11 CFR 9036.2(b)(1), except that:

(1) The candidate need not provide photocopies of written instruments, supporting documentation and bank documentation unless it is necessary to supplement the original documentation.

(2) Each resubmitted contribution shall be referenced to the submission in which it was first presented.

(3) Each list of resubmitted contributions shall reflect the aggregate amount of contributions submitted for matching from each contributor as of the date of the original submission.

(4) Each list of resubmitted contributions shall reflect the aggregate amount of contributions submitted for matching from each contributor as of the date of the resubmission.

(5) Each list of resubmitted contributions shall only contain contributions previously submitted for matching and no new or additional contributions.

(6) Each resubmission shall be accompanied by a statement that the candidate has corrected his or her contributor records (including the data base for those candidates maintaining their contributor list on computer).

(d) *Certification of resubmitted contributions.* Contributions that the Commission determines to be matchable will be certified to the Secretary within 15 business days. If the candidate chooses to request the specific contributions rejected for matching pursuant to 11 CFR 9036.5(a)(2), the amount certified shall equal only the matchable amount of the particular contribution that meets the standards on resubmission, rather than the amount projected as being nonmatchable based on that contribution due to the sampling techniques used in reviewing the original submission.

(e) *Initial determinations.* If the candidate resubmits a contribution for matching and the Commission determines that the rejected contribution is still nonmatchable, the Commission will notify the candidate in writing of its determination. The Commission will advise the candidate of the legal and factual reasons for its determination and of the evidence on which that determination is based. The candidate may submit written legal or factual materials to demonstrate that the contribution is matchable within 30 calendar days after service of the Commission's notice. Such materials may be submitted by counsel if the candidate so desires.

(f) *Final determinations.* The Commission will consider any written legal or factual materials timely submitted by the candidate in making its final determination. A final determination by the Commission that a contribution is not matchable will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation upon which the determination is based.

§ 9036.6 Continuation of certification.

Candidates who have received matching funds and who are eligible to continue to receive such funds may continue to submit additional submissions for payment to the Commission on dates specified in the Federal Election Commission's Guideline for Presentation in Good Order. The Commission will notify each candidate of the last date on which contributions may be submitted for the first time for matching in the year following the election. The last date for first-time submissions will be either the last Monday in February or the second Monday in March of the year following the election, depending on the submission schedule the Commission has designated for the candidate. No contribution will be matched if it is submitted after the last submission date designated for that candidate, regardless of the date the contribution was deposited.

PART 9037—PAYMENTS

Sec.

9037.1 Payments of Presidential primary matching funds.
9037.2 Equitable distribution of funds.
9037.3 Deposits of Presidential primary matching funds.

Authority: 26 U.S.C. 9037 and 9039(b).

§ 9037.1 Payments of Presidential primary matching funds.

Upon receipt of a written certification from the Commission, but not before the beginning of the matching payment period, the Secretary will promptly transfer the amount certified from the matching payment account to the candidate.

§ 9037.2 Equitable distribution of funds.

In making such transfers to candidates of the same political party, the Secretary will seek to achieve an equitable distribution of funds available in the matching payment account, and the Secretary will take into account, in seeking to achieve an equitable distribution of funds available in the matching payment account, the sequence in which such certifications are received.

§ 9037.3 Deposits of Presidential primary matching funds.

Upon receipt of any matching funds, the candidate shall deposit the full amount received into a checking account maintained by the candidate's principal campaign committee in the depository designated by the candidate.

PART 9038—EXAMINATION AND AUDITS

Sec.

9038.1 Audit.
9038.2 Repayments.
9038.3 Liquidation of obligations; repayment.
9038.4 Extensions of time.
9038.5 Petitions for rehearing; stays of repayment determinations.
9038.6 Stale-dated committee checks.

Authority: 26 U.S.C. 9038 and 9039(b).

§ 9038.1 Audit.

(a) *General.* (1) The Commission will conduct an audit of the qualified campaign expenses of every candidate and his or her authorized committee(s) who received Presidential primary matching funds. The audit may be conducted at any time after the date of the candidate's ineligibility.

(2) In addition, the Commission may conduct other examinations and audits from time to time as it deems necessary to carry out the provisions of this subchapter.

(3) Information obtained pursuant to any audit and examination conducted under 11 CFR 9038.1(a) (1) and (2) may be used by the Commission as the basis, or partial basis, for its repayment determinations under 11 CFR 9038.2.

(b) *Conduct of fieldwork.* (1) If the candidate or the candidate's authorized committee does not maintain or use any computerized information containing the data listed in 11 CFR 9033.12, the Commission will give the candidate's authorized committee at least two weeks' notice of the Commission's intention to commence fieldwork on the audit and examination. The fieldwork shall be conducted at a site provided by the committee. If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the data listed in 11 CFR 9033.12, the Commission generally will request such information prior to commencement of audit fieldwork. Such request will be made in writing. The committee shall produce the computerized information no later than 15 calendar days after service of such request. Upon receipt of the computerized information requested and

compliance with the technical specifications of 11 CFR 9033.12(b), the Commission will give the candidate's authorized committee at least two weeks' notice of the Commission's intention to commence fieldwork on the audit and examination. The fieldwork shall be conducted at a site provided by the committee. During or after audit fieldwork, the Commission may request additional or updated computerized information which expands the coverage dates of computerized information previously provided, and which may be used for purposes including, but not limited to, updating a statement of net outstanding campaign obligations, or updating the amount chargeable to a state expenditure limit. During or after audit fieldwork, the Commission may also request additional computerized information which was created by or becomes available to the committee and that is of assistance in the Commission's audit. The committee shall produce the additional or updated computerized information no later than 15 calendar days after service of the Commission's request.

(i) *Office space and records.* On the date scheduled for the commencement of fieldwork, the candidate or his or her authorized committee(s) shall provide Commission staff with office space and committee records in accordance with the candidate and committee agreement under 11 CFR 9033.1(b)(6).

(ii) *Availability of committee personnel.* On the date scheduled for the commencement of fieldwork, the candidate or his or her authorized committee(s) shall have committee personnel present at the site of the fieldwork. Such personnel shall be familiar with the committee's records and operation and shall be available to Commission staff to answer questions and to aid in locating records.

(iii) *Failure to provide staff, records or office space.* If the candidate or his or her authorized committee(s) fail to provide adequate office space, personnel or committee records, the Commission may seek judicial intervention under 2 U.S.C. 437d or 26 U.S.C. 9040(c) to enforce the candidate and committee agreement made under 11 CFR 9033.1(b). Before seeking judicial intervention, the Commission will notify the candidate of his or her failure to comply with the agreement and will recommend corrective action to bring the candidate into compliance. Upon receipt of the Commission's notification, the candidate will have 10 calendar days in which to take the corrective action indicated or to otherwise demonstrate to the Commission in writing that he or she is complying with the candidate and committee agreement.

(iv) If, in the course of the audit process, a dispute arises over the documentation sought or other requirements of the candidate agreement, the candidate may seek review by the Commission of the issues raised. To seek review, the candidate shall submit a written statement, within 10 calendar days after the disputed Commission staff request is made, describing the dispute and indicating the candidate's proposed alternative(s).

(v) If the candidate or his or her authorized committee fails to produce particular records, materials, evidence or other information requested by the Commission, the Commission may issue an order pursuant to 11 CFR 111.11 or a subpoena or subpoena duces tecum pursuant to 11 CFR 111.12. The procedures set forth in 11 CFR 111.11 through 111.15, as appropriate, shall apply to the production of such records, materials, evidence or other information as specified in the order, subpoena or subpoena duces tecum.

(2) Field work will include the following steps designed to keep the candidate and committee informed as to the progress of the audit and to expedite the process:

(i) *Entrance conference.* At the outset of the fieldwork, Commission staff will hold an entrance conference, at which the candidate's representatives will be advised of the purpose of the audit and the general procedures to be followed. Future requirements of the candidate and his or her authorized committee, such as possible repayments to the United States Treasury, will also be discussed. Committee representatives shall provide information and records necessary to conduct the audit, and Commission staff will be available to answer committee questions.

(ii) *Review of records.* During the fieldwork, Commission staff will review committee records and may conduct interviews of committee personnel. Commission staff will be available to explain aspects of the audit and examination as it progresses. Additional meetings between Commission staff and committee personnel may be held from time to time during the fieldwork to discuss possible audit findings and to resolve issues arising during the course of the audit.

(iii) *Exit conference.* At the conclusion of the fieldwork, Commission staff will hold an exit conference to discuss with committee representatives the staff's preliminary findings and recommendations which the Commission staff anticipates that it may present to the Commission for approval. Commission staff will advise committee representatives at this conference of the projected timetable regarding the issuance of an audit report, the committee's opportunity to respond thereto, and the Commission's initial and final repayment determinations under 11 CFR 9038.2.

(3) Commission staff may conduct additional fieldwork after the completion of the fieldwork conducted pursuant to 11 CFR 9038.1(b) (1) and (2). Factors that may necessitate such follow-up fieldwork include, but are not limited to, the following:

(i) Committee responses to audit findings;

(ii) Financial activity of the committee subsequent to the fieldwork conducted pursuant to 11 CFR 9038.1(b)(1);

(iii) Committee responses to Commission repayment determinations made under 11 CFR 9038.2.

(4) The Commission will notify the candidate and his or her authorized committee of follow-up fieldwork is necessary. The provisions of 11 CFR 9038.1(b) (1) and (2) shall apply to any additional fieldwork conducted.

(c) *Preparation of interim audit report.* (1) After the completion of the fieldwork conducted pursuant to 11 CFR 9038.1(b)(1), the Commission will issue an interim audit report to the candidate and his or her authorized committee. The interim audit report may contain Commission findings and recommendations regarding one or more of the following areas:

(i) An evaluation of procedures and systems employed by the candidate and committee to comply with applicable provisions of the Federal Election Campaign Act, Primary Matching Payment Account Act and Commission regulations;

(ii) Eligibility of the candidate to receive primary matching payments;

(iii) Accuracy of statements and reports filed with the Commission by the candidate and committee;

(iv) Compliance of the candidate and committee with applicable statutory and regulatory provisions except for those instances where the Commission has instituted an enforcement action on the matter(s) under the provisions of 2 U.S.C. 437g and 11 CFR part 111; and

(v) Preliminary calculations regarding future repayments to the United States Treasury.

(2) The candidate and his or her authorized committee will have an opportunity to submit, in writing, within 30 calendar days after service of the interim report, legal and factual materials disputing or commenting on

the contents of the interim report. Such materials may be submitted by counsel if the candidate so desires.

(3) The Commission will consider any written legal and factual materials submitted by the candidate or his or her authorized committee in accordance with 11 CFR 9038.1(c)(2) before approving and issuing an audit report to be released to the public. The contents of the publicly-released audit report may differ from that of the interim report since the Commission will consider timely submissions of legal and factual materials by the candidate or committee in response to the interim report.

(d) *Preparation of publicly-released audit report.* An audit report prepared subsequent to an interim report will be publicly released pursuant to 11 CFR 9038.1(e). This report will contain Commission findings and recommendations addressed in the interim audit report but may contain adjustments based on the candidate's response to the interim report. In addition, this report will contain an initial repayment determination made by the Commission pursuant to 11 CFR 9038.(c)(1) in lieu of the preliminary calculations asset forth in the interim report.

(e) *Public release of audit report.* (1) After the candidate and committee have had an opportunity to respond to a written interim report of the Commission, the Commission will make public the audit report prepared subsequent to the interim report, as provided in 11 CFR 9038.1(d).

(2) If the Commission determines, on the basis of information obtained under the audit and examination process, that certain matters warrant enforcement under 2 U.S.C. 437g and 11 CFR part 111, those matters will not be contained in the publicly-released report. In such cases, the audit report will indicate that certain other matters have been referred to the Commission's Office of General Counsel.

(3) The Committee will provide the candidate and the committee with copies of the agenda document containing those portions of the final audit report to be considered in open session 24 hours prior to releasing the agenda document to the public. The Commission will also provide the candidate and committee with copies of the final audit report 24 hours before releasing the report to the public.

(4) Addenda to the audit report may be issued from time to time as circumstances warrant and as additional information becomes available. Such addenda may be based, in part, on follow-up fieldwork conducted under 11 CFR 9038.1(b)(3), and will be placed on the public record.

§ 9038.2 Repayments.

(a) *General.* (1) A candidate who has received payments from the matching payment account shall pay the United States Treasury any amounts which the Commission determines to be repayable under this section. In making repayment determinations under this section, the Commission may utilize information obtained from audits and examinations conducted pursuant to 11 CFR 9038.1 and part 9039 or otherwise obtained by the Commission in carrying out its responsibilities under this subchapter.

(2) The Commission will notify the candidate of any repayment determinations made under this section as soon as possible, but not later than 3 years after the end of the matching payment period. The Commission's written notice of its preliminary calculations regarding future repayments under 11 CFR 9038.1(c) will constitute notification for purposes of the 3 year period. If the candidate or committee fails to provide records that the Commission determines are necessary to make a repayment determination, the Commission may notify the candidate that the running of the 3 year period will be suspended until the Commission receives the records.

(3) Once the candidate receives notice of the Commission's final repayment determination under this section, the candidate should give preference to the repayment over all other outstanding obligations of his or her committee, except for any federal taxes owed by the committee.

(b) *Bases for repayment*—(1) *Payments in excess of candidate's entitlement.* The Commission may determine that certain portions of the payments made to a candidate from the matching payment account were in excess of the aggregate amount of payments to which such candidate was entitled. Examples of such excessive payments include, but are not limited to, the following:

(i) Payments made to the candidate after the candidate's date of ineligibility where it is later determined that the candidate had no net outstanding campaign obligations as defined in 11 CFR 9034.5;

(ii) Payments or portions of payments made to the candidate which are later determined to have been excessive due to the operation of the Commission's expedited payment procedures as set forth in the Federal Election Commission's Guideline for Presentation in Good Order;

(iii) Payments or portions of payments made on the basis of matched contributions later determined to have been non-matchable;

(iv) Payments or portions of payments made to the candidate which are later determined to have been excessive due to the candidate's failure to include funds received by a fundraising representative committee under 11 CFR 9034.8 on the candidate's statement of net outstanding campaign obligations under 11 CFR 9034.5; and

(v) Payments or portions of payments made to the candidate on the basis of the debts reflected in the candidate's statement of net outstanding campaign obligations, which debts are later settled for an amount less than that stated in the statement of net outstanding campaign obligations.

(2) *Use of funds for non-qualified campaign expenses.* (i) The Commission may determine that amount(s) of any payments made to a candidate from the matching payment account were used for purposes other than those set forth in paragraphs (b)2)(i) (A)–(C) of this section:

(A) Defrayal of qualified campaign expenses;

(B) Repayment of loans which were used to defray qualified campaign expenses; and

(C) Restoration of funds (other than contributions which were received and expended to defray qualified campaign expenses) which were used to defray qualified campaign expenses.

(ii) Examples of Commission repayment determinations under 11 CFR 9038.2(b)(2) include, but are not limited to, the following:

(A) Determinations that a candidate, a candidate's authorized committee(s) or agents have made expenditures in excess of the limitations set forth in 11 CFR part 9035;

(B) Determinations that funds described in 11 CFR 9038.2(b)(2)(i) were expended in violation of state or federal law; and

(C) Determinations that funds described in 11 CFR 9038.2(b)(2)(i) were expended for expenses resulting from a violation of state or federal law, such as the payment of fines or penalties.

(iii) The amount of any repayment sought under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of matching funds certified to the candidate bears to the total deposits, as of the candidate's date of ineligibility. Total deposits is defined in accordance with 11 CFR 9038.3(c)(2). For the purpose of seeking repayment for non-qualified

campaign expenses from committees that have received matching fund payments after the candidate's date of ineligibility, the Commission will review committee expenditures to determine at what point committee accounts no longer contain matching funds. In doing this, the Commission will review committee expenditures from the date of the last matching fund payment to the candidate, using the assumption that the last payment has been expended on a last-in, first-out basis.

(iv) Repayment determinations under 11 CFR 9038.2(b)(2) will not include non-qualified campaign expenses which, because they were included on the candidate's statement of net outstanding campaign obligations, served as a basis for a repayment determination under 11 CFR 9038.2(b)(1).

(3) *Failure to provide adequate documentation.* The Commission may determine that amount(s) spent by the candidate, the candidate's authorized committee(s), or agents were not documented in accordance with 11 CFR 9033.11. The amount of any repayment sought under this section shall be determined by using the formula set forth in 11 CFR 9038.2(b)(2)(iii).

(4) *Surplus.* The Commission may determine that the candidate's net outstanding campaign obligations, as defined in 11 CFR 9034.5, reflect a surplus. The Commission may determine that the net income derived from the investment of surplus public funds after the candidate's date of ineligibility, less Federal, State and local taxes paid on such income, is also repayable.

(c) *Repayment determination procedures.* Commission repayment determinations will be made in accordance with the procedures set forth at 11 CFR 9038.2(c) (1) through (4) of this section.

(1) *Initial determination.* The Commission will provide the candidate with a written notice of its initial repayment determination(s). This notice will be included in the Commission's publicly-released audit report, pursuant to 11 CFR 9038.1(d), and will set forth the legal and factual reasons for such determination(s). Such notice will also advise the candidate of the evidence upon which any such determination is based. If the candidate does not dispute an initial repayment determination of the Commission within 30 calendar days after service of the notice, such initial determination will be considered a final determination of the Commission.

(2) *Submission of written materials.* If the candidate disputes the Commission's initial repayment determination(s), he or she shall have an opportunity to submit in writing, within 30 calendar days after service of the Commission's notice, legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. The Commission will consider any written legal and factual materials submitted by the candidate within this 30 day period in making its final repayment determination(s). Such materials may be submitted by counsel if the candidate so desires.

(3) *Oral presentation.* A candidate who has submitted written materials under 11 CFR 9038.2(c)(2) may request that the Commission provide such candidate with an opportunity to address the Commission in open session. If the Commission decides by an affirmative vote of four (4) of its members to grant the candidate's request, it will inform the candidate of the date and time set for the oral presentation. At the date and time set by the Commission, the candidate or candidate's designated representative will be allotted an amount of time in which to make an oral presentation to the Commission based upon the legal and factual materials submitted under 11 CFR 9038.2(c)(2). The candidate or representative will also have the opportunity to answer any questions from individual members of the Commission.

(4) *Final determination.* In making its final repayment determination(s), the Commission will consider any submission made under 11 CFR 9038.2(c)(2) and any oral presentation made under 11 CFR 9038.2(c)(3). A final determination that a candidate must repay a certain amount will be accompanied by a written statement of reasons for the Commission's actions. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation upon which the determination is based.

(d) *Repayment period.* (1) Within 90 calendar days after service of the notice of the Commission's initial repayment determination(s), the candidate shall repay to the Secretary amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(2) If the candidate submits written materials under 11 CFR 9038.2(c)(2) disputing the Commission's initial repayment determination(s), the time for repayment will be suspended until the Commission makes its final repayment determination(s). Within 30 calendar days after service of the notice of the Commission's final repayment determination(s), the candidate shall repay to the Secretary amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 days in which to make repayment.

(e) *Computation of time.* The time periods established by this section shall be computed in accordance with 11 CFR 111.2.

(f) *Additional repayments.* Nothing in this section will prevent the Commission from making additional repayment determinations on one or more of the bases set forth at 11 CFR 9038.2(b) after it has made a final determination on any such basis. The Commission may make additional repayment determinations where there exist facts not used as the basis for a previous final determination. Any such additional repayment determination will be made in accordance with the provisions of this section.

(g) *Newly-discovered assets.* If, after any initial or final repayment determination made under this section, a candidate or his or her authorize committee(s) receives or becomes aware of assets not previously included in any statement of net outstanding campaign obligations submitted pursuant to 11 CFR 9034.5, the candidate or his or her authorize committee(s) shall promptly notify the Commission of such newly-discovered assets. Newly-discovered assets may include refunds, rebates, late-arriving receivables, and actual receipts for capital assets in excess of the value specified in any previously-submitted statement of net outstanding campaign obligations. Newly-discovered assets may serve as a basis for additional repayment determinations under 11 CFR 9038.2(f).

(h) *Petitions for rehearing; stays pending appeal.* The candidate may file a petition for rehearing of a final repayment determination in accordance with 11 CFR 9038.5(a).The candidate may request a stay of a final repayment determination in accordance with 11 CFR 9038.5(c) pending the candidate's appeal of that repayment determination.

§ 9038.3 Liquidation of obligations; repayment.

(a) The candidate may retain amounts received from the matching payment account for a period not exceeding 6 months after the matching payment period to pay qualified campaign expenses incurred by the candidate.

(b) After all obligations have been liquidated, the candidate shall so inform the Commission in writing.

(c)(1) If on the last day of candidate eligibility the candidate's net

outstanding campaign obligations, as defined in 11 CFR 9034.5, reflect a surplus, the candidate shall within 30 calendar days of the ineligibility date repay to the Secretary an amount which represents the amount of matching funds contained in the candidate's surplus. The amount shall be an amount equal to that portion of the surplus which bears the same ratio to the total surplus that the total amount received by the candidate from the matching payment account bears to the total deposits made to the candidate's accounts.

(2) For purposes of this subsection, total deposits means all deposits to all candidate accounts minus transfers between accounts, refunds, rebates, reimbursements, checks returned for insufficient funds, proceeds of loans and other similar amounts.

(3) Notwithstanding the payment of any amounts to the United States Treasury under this section, the Commission may make surplus repayment determination(s) which require repayment in accordance with 11 CFR 9038.2.

§ 9038.4 Extensions of time.

(a) It is the policy of the Commission that extensions of time under 11 CFR part 9038 shall not be routinely granted.

(b) Whenever a candidate has a right or is required to take action within a period of time prescribed by 11 CFR part 9038 or by notice given thereunder, the candidate may apply in writing to the Commission for an extension of time in which to exercise such right or take such action. The candidate shall demonstrate in the application for extension that good cause exists for his or her request.

(c) An application for extension of time shall be made at least 7 calendar days prior to the expiration of the time period for which the extension is sought. The Commission may, upon a showing of good cause, grant an extension of time to a candidate who has applied for such extension in a timely manner. The length of time of any extension granted hereunder will be decided by the Commission and may be less than the amount of time sought by the candidate in his or her application.

(d) If a candidate fails to seek an extension of time, exercise a right or take a required action prior to the expiration of a time period prescribed by 11 CFR part 9038 the Commission may, on the candidate's showing of excusable neglect:

(1) Permit such candidate to exercise his or her right(s), or take such required action(s) after the expiration of the prescribed time period; and

(2) Take into consideration any information obtained in connection with the exercise of any such right or taking of any such action before making decisions or determinations under 11 CFR part 9038.

§ 9038.5 Petitions for rehearing; stays of repayment determinations.

(a) *Petitions for rehearing.* (1) Following the Commission's final determination under 11 CFR 9033.10 or 9034.5(g) or the Commission's final repayment determination under 11 CFR 9038.2(c)(4), the candidate may file a petition for rehearing setting forth the relief desired and the legal and factual basis in support. To be considered by the Commission, petitions for rehearing must:

(i) Be filed within 20 calendar days after service of the Commission's final determination;

(ii) Raise new questions of law or fact that would materially alter the Commission's final determination; and

(iii) Set forth clear and convincing grounds why such questions were not and could not have been presented during the earlier determination process.

(2) If a candidate files a timely petition under this section challenging a Commission final repayment determination, the time for repayment of the amount at issue will be suspended until the Commission serves notice on the candidate of its determination on the petition. The time periods for making repayment under 11 CFR 9038.2(d)(2) shall apply to any amounts determined to be repayable following the Commission's consideration of a petition for rehearing under this section.

(b) *Effect of failure to raise issues.* The candidate's failure to raise an argument in a timely fashion during the initial determination process or in a petition for rehearing under this section, as appropriate, shall be deemed a waiver of the candidate's right to present such arguments in any future stage of proceedings including any petition for review filed under 26 U.S.C. 9041(a). An issue is not timely raised in a petition for rehearing if it could have been raised earlier in response to the Commission's initial determination.

(c) *Stay of repayment determination pending appeal.*

(1)(i) The candidate may apply to the Commission for a stay of all or a portion of the amount determined to be repayable under this section or under 11 CFR 9038.2 pending the candidate's appeal of that repayment determination pursuant to 26 U.S.C. 9041(a). The repayment amount requested to be stayed shall not exceed the amount at issue on appeal.

(ii) A request for a stay shall be made in writing and shall be filed within 30 calendar days after service of the Commission's decision on a petition for rehearing under paragraph (a), or, if no petition for rehearing is filed, within 30 calendar days after service of the Commission's final repayment determination under 11 CFR 9038.2(c)(4).

(2) The Commission's approval of a stay request will be conditioned upon the candidate's presentation of evidence in the stay request that he or she:

(i) Has placed the entire amount at issue in a separate interest-bearing account pending the outcome of the appeal and that withdrawals from the account may only be made with the joint signatures of the candidate or his or her agent and a Commission representative; or

(ii) Has posted a surety bond guaranteeing payment of the entire amount at issue plus interest; or

(iii) Has met the following criteria:

(A) He or she will suffer irreparable injury in the absence of a stay; and, if so, that

(B) He or she has made a strong showing of the likelihood of success on the merits of the judicial action.

(C) Such relief is consistent with the public interest; and

(D) No other party interested in the proceedings would be substantially harmed by the stay.

(3) In determining whether the candidate has made a strong showing of the likelihood of success on the merits under paragraph (c)(2)(iii)(B) of this section, the Commission may consider whether the issue on appeal presents a novel or admittedly difficult legal question and whether the equities of the case suggest that the status quo should be maintained.

(4) All stays shall require the payment of interest on the amount at issue. The amount of interest due shall be calculated from the date 30 days after service of the Commission's final repayment determination under 11 CFR 9038.2(c)(4) and shall be the greater of:

(i) An amount calculated in accordance with 28 U.S.C. 1961 (a) and (b); or

(ii) The amount actually earned on the funds set aside under this section.

§ 9038.6 Stale-dated committee checks.

If the committee has checks outstanding to creditors or contributors that have not been cashed, the committee shall notify the Commission. The committee shall inform the Commission of its efforts to locate the payees, if such efforts have been necessary, and its efforts to encourage the payees to cash the outstanding checks. The committee shall also submit

a check for the total amount of such outstanding checks, payable to the United States Treasury.

PART 9039—REVIEW AND INVESTIGATION AUTHORITY

Sec.
9039.1 Retention of books and records.
9039.2 Continuing review.
9039.3 Examinations and audits; investigations.

Authority: 26 U.S.C. 9039.

§ 9039.1 Retention of books and records.

The candidate and his or her authorized committee(s) shall keep all books, records and other information required under 11 CFR 9033.11, and 9034.2 and part 9036 for a period of three years pursuant to 11 CFR 102.9(c) and shall furnish such books, records and information to the Commission on request.

§ 9039.2 Continuing review.

(a) In reviewing candidate submissions made under 11 CFR part 9036 and in otherwise carrying out its responsibilities under this subchapter, the Commission may routinely consider information from the following sources:

(1) Any and all materials and communications which the candidate and his or her authorized committee(s) submit or provide under 11 CFR part 9036 and in response to inquiries or requests of the Commission and its staff;

(2) Disclosure reports on file with the Commission; and

(3) Other publicly available documents.

(b) In carrying out the Commission's responsibilities under this subchapter, Commission staff may contact representatives of the candidate and his or her authorized committee(s) to discuss questions and to request documentation concerning committee activities and any submission made under 11 CFR part 9036.

§ 9039.3 Examination and audits; investigations.

(a) *General.* (1) The Commission will consider information obtained in its continuing review under 11 CFR 9039.2 in making any certification, determination or finding under this subchapter. If the Commission decides by an affirmative vote of four of its members that additional information must be obtained in connection with any such certification, determination or finding, it will conduct a further inquiry. A decision to conduct an inquiry under this section may be based on information that is obtained under 11 CFR 9039.2, received by the Commission from outside sources, or otherwise ascertained by the Commission in carrying out its supervisory responsibilities under the Presidential Primary Matching Payment Account Act and the Federal Election Campaign Act.

(2) an inquiry conducted under this section may be used to obtain information relevant to candidate eligibility, matchability of contributions and repayments to the United States Treasury. Information obtained during such an inquiry may be used as the basis, or partial basis, for Commission certifications, determinations and findings under 11 CFR parts 9033, 9034, 9036 and 9038. Information thus obtained may also be the basis of, or be considered in connection with, an investigation under 2 U.S.C. 437g and 11 CFR part 111.

(3) Before conducting an inquiry under this section, the Commission will attempt to obtain relevant information under the continuing review provisions of 11 CFR 9039.2. Matching payments will not be withheld pending the results of an inquiry under this section unless the Commission finds patent irregularities suggesting the possibility of fraud in materials submitted by, or in the activities of, the candidate or his or her authorized committee(s).

(b) *Procedures.* (1) The Commission will notify the candidate of its decision to conduct an inquiry under this section. The notice will summarize the legal and factual basis for the Commission's decision.

(2) The Commission's inquiry may include, but is not limited to, the following:

(i) A field audit of the candidate's books and records;

(ii) Field interviews of agents and representatives of the candidate and his or her authorized committee(s);

(iii) Verification of reported contributions by contacting reported contributors;

(iv) Verification of disbursement information by contacting reported vendors;

(v) Written questions under order;

(vi) Production of documents under subpoena;

(vii) Depositions.

(3) The provisions of 2 U.S.C. 437g and 11 CFR part 111 will not apply to inquiries conducted under this section except that the provisions of 11 CFR 111.12 through 111.15 shall apply to any orders or subpoenas issued by the Commission.

Dated: December 24, 1990.

Lee Ann Elliott,

Chairman, Federal Election Commission.

[FR Doc. 90-30378 Filed 12-31-90; 8:45 am]

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federal register

Wednesday
January 2, 1991

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121, 129, and 135
Prohibition Against Smoking; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 129, and 135

[Docket No. 25590; Amdt. Nos. 121-213, 129-20, and 135-35]

Prohibition Against Smoking

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Disposition of comments.

SUMMARY: This document summarizes and responds to comments received by the FAA concerning the Prohibition Against Smoking Final Rule. Due to a congressional mandate, the rule was effective upon issuance. Because of the early effective date, the FAA did not have sufficient time to issue a notice of proposed rulemaking and receive comments from the public. Therefore, post-effective date comments were invited from the public. The comment period closed on April 23, 1990.

DATES: Effective Date of Final Rule: February 28, 1990.

ADDRESSES: The Prohibition Against Smoking Final Rule docket may be examined at the Federal Aviation Administration, Office of the Chief Counsel, Rules Docket, Room 915–G, 800 Independence Avenue, SW., Washington, DC 20591. The Rules Docket is open weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Youngblut, Project Development Branch (AFS–240), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8096.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued the Prohibition Against Smoking Final Rule on February 28, 1990, and published it in the **Federal Register** on March 7, 1990 (55 FR 8364). Because Congress required that the prohibition go into effect on February 25, 1990, the FAA rule became effective upon issuance. Post-effective date comments were invited from the public. The comments and the FAA's disposition of the comments are discussed below.

The FAA received six comments: four supporting the rule, and two opposing the rule. Four comments were from private citizens. The remaining two comments were from an air carrier and a representative of the tobacco industry.

One private citizen commenter opposes the prohibition stating that smoking should be the personal choice of each individual. However, the FAA regulation is the result of a congressional mandate to prohibit smoking during certain flights within the United States. The FAA must implement the congressional mandate and, in so doing, the FAA cannot exclude any flights that the mandate included.

In a comment received from the Tobacco Institute, also opposing the rule, two objections are made. The first objection is that the purported health benefits discussed in the regulatory evaluation accompanying the rule are unsupported and unnecessary to implement the new statute.

The FAA disagrees. Much of the testimony presented on June 22, 1989, to the House Subcommittee on Aviation showed that there are health dangers from exposing nonsmoking passengers and flight attendants to environmental tobacco smoke (ETS). The FAA utilized this testimony in its regulatory evaluation to estimate the health benefits that nonsmoking passengers and flight attendants will experience from the decrease in ETS due to the smoking prohibition. Although the FAA stated that the health benefits were unquantifiable, this does not minimize their value. Instead, it points out that there may be problems in quantifying the dollar value of such benefits. However, based on the testimony presented to Congress and contained in the docket, there is sufficient evidence to support the FAA's position that some health benefits will result from this rulemaking.

The commenter's assertion that a discussion of the health benefits is unnecessary to implement the statute is incorrect. The FAA is required by Executive Order 12291 to present a cost-benefit analysis for its regulations, even where the contents of a particular regulation have been prescribed by an act of Congress. The primary benefit gained from this rulemaking is the reduction in ETS-related health problems; therefore, the benefits must be discussed.

The Tobacco Institute's second objection is that the FAA is encouraging air carriers to decrease the use of ventilation systems on aircraft. The commenter believes that this encouragement is implied by the agency's statements that air carriers will realize savings through less wear and tear on the ventilation system if smoking is banned.

It appears that the Tobacco Institute has misinterpreted the statement in the regulatory evaluation regarding the lessened wear and tear on aircraft. The FAA is not encouraging air carriers to cut back on the use of aircraft ventilation systems. Instead, when enumerating the benefits of the rule, the FAA stated that in the absence of tobacco smoke, the ventilation system would not have to work as hard and would wear out less often. This promotes savings due to fewer replacement parts needed and lower maintenance costs.

The remaining commenters, three private citizens and one industry organization, support the prohibition; however, all four commenters recommend that the FAA extend the prohibition to the cockpit.

The purpose of this rulemaking is to implement the congressional mandate, which applies to smoking in the passenger cabin or aircraft lavatory. Congress refrained from prohibiting smoking in the cockpit. Therefore, extending the smoking prohibition to include the cockpit is beyond the scope of this rulemaking.

In July 1989, the Office of the Secretary of Transportation asked the FAA to review its policy concerning smoking in the cockpit. Since 1978, it has been the FAA's policy not to ban smoking in the cockpit by regulation. In April 1978, a panel of expert consultants was convened by the National Institutes of Health to study the issue of flight crewmembers smoking in the cockpit. They found that the adverse effects of withdrawal in a chronic smoker are potentially significant and may have a net adverse effect on flight safety because of pilot performance degradation. Since the FAA is unaware of any new information regarding the effects of withdrawal in the habitual smoker, the FAA has asked the Office on Smoking and Health, of the U.S. Public Health Service, to review the 1978 National Institutes of Health study to determine its current validity. This review is currently underway.

In addition, the FAA received a petition for rulemaking from Mr. Nick Pittenger on February 13, 1990, that requests that no person be allowed to smoke on the flight deck without the

permission of each flight deck crewmember. This petition for rulemaking was published in the **Federal Register** on March 22, 1990 (55 FR 10620). The comment period closed on May 26, 1990. All comments received will be fully evaluated before any final action on this petition is taken.

Following a careful evaluation of the comments, the FAA has determined that no change to the rule is warranted at this time.

Issued in Washington, DC, on December 26, 1990.

William C. Withcycombe,

Acting Director, Flight Standards Service.

[FR Doc. 90–30586 Filed 12–27–90; 8:45 am]

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federal register

Wednesday
January 2, 1991

Part IV

Department of Commerce

Office of the Secretary

15 CFR Part 19

Metric Conversion Policy for Federal Agencies; Rule

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 19

[Docket No. 90913-0259]

RIN 0692-AA07

Metric Conversion Policy for Federal Agencies

AGENCY: Office of the Secretary, Under Secretary for Technology, U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: 15 CFR part 19 subpart B sets out Federal Government policy on the voluntary use of the metric system of measurement by agencies, industry and the public. In conformance with the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, section 5164), we are revising that subpart to remove the voluntary aspect of metric transition for Federal agencies. The amended subpart B provides policy direction to assist Federal agencies in their transition to use of the metric system of measurement.

EFFECTIVE DATE: February 1, 1991.

FOR FURTHER INFORMATION CONTACT: A. S. Whelihan, Office of Metric Programs, Room 4845, U.S. Department of Commerce, Washington, DC 20230; Phone (202) 377–0944.

SUPPLEMENTARY INFORMATION:

Background

The Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, section 5164) declares the metric system to be the "preferred measurement system for U.S. trade and commerce." Federal agencies are also now required to use the metric system in procurement, grants and other business-related activities, by a date certain and to the extent economically feasible by the end of fiscal year 1992, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms, such as when foreign competitors are producing competing products in non-metric units.

These declarations and the accompanying report of the Congressional conferees require this updating of the existing Federal policy document. The policy set out below was issued as a proposed rule: "Metric Conversion Policy for Federal Agencies," 54 FR 41848, October 12, 1989, which updated the policy stated in a prior notice: "Metric Conversion Policy for Federal Agencies," 50 FR 27577, July 5, 1985. The updated policy has been taken directly from the 1985 notice. However, this rule amends the earlier policy to bring the references and text up-to-date. The policy clarifies and strengthens Federal program requirements. Implementing agency initiatives are expected.

The current text reflects comments received from the public (1 comment) as well as from the Federal Metrication Operating Committee (MOC.) The text of the policy has been approved by the Federal Interagency Council on Metric Policy (ICMP.) Recommended changes from the representatives of the ICMP/MOC included updating the **Federal Register** notice defining the "metric system," clarifying the term "other business-related activities," and adding agency reporting requirements. These changes were made and are incorporated in the rule.

The only private sector response was from the American Petroleum Institute (API.) The API commented on: (1) Section 19.23(a), encouraging DoC to continue to coordinate federal agency metrication activities. That section was modified in the final, although it never mentioned DoC. However 19.22(a) refers to the Department's coordination role; (2) section 19.23(b), asking for a clarification of "areas where metrication is dependent on agency initiatives." That language was clarified and became § 19.23(c); and (3) section 19.23(d) pointing out that the American National Metric Council and the U.S. Metric Association are good sources for agencies seeking information on private sector metrication efforts. Section 19.24(d) recommends that agencies "maintain liaison with private sector groups (such as the American National Metric Council and the U.S. Metric Association) that are involved in planning for or coordinating National transition to the metric system."

Rulemaking Requirement

Under Executive Order 12291 the Department must judge whether a regulation is major within the meaning of section 1 of the Order and, therefore, subject to the requirement that a Regulatory Impact Analysis be prepared. This policy statement is not a major rule because it is not likely to result in (1) an annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or in the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, a Regulatory Impact Analysis will not be prepared.

This policy statement contains no policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

This action is exempt from the analysis requirements of the Regulatory Flexibility Act because notice and opportunity for comment are not required for this policy statement by section 553 of the Administrative Procedure Act or any other law. Therefore, no initial or final regulatory flexibility analysis was prepared.

This policy statement does not contain a collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 15 CFR Part 19

Science and technology, Metric system.

For the reasons set out in the preamble part 19 of title 15 of the Code of Federal Regulations is amended as follows:

1. The authority citation for 15 CFR part 19 is revised to read as follows:

Authority: 15 U.S.C. 1512 and 3710, 15 U.S.C. 205a *et seq.* and DOO 10–17.

2. Subpart B is revised to read as follows:

Subpart B—Metric Conversion Policy for Federal Agencies

Sec.

19.20 Purpose.
19.21 Definition.
19.22 General Policy.
19.23 Guidelines.
19.24 Recommendations for Agency Organizations.
19.25 Reporting Requirement.
19.26 thru 19.199 reserved.

Subpart B—Metric Conversion Policy for Federal Agencies

§ 19.20 Purpose.

To provide policy direction for Federal agencies in their transition to use of the metric system of measurement.

§ 19.21 Definition.

Metric system means the International System of Units (SI) established by the General Conference of Weights and Measures in 1960, as interpreted or modified from time to time for the United States by the Secretary of Commerce under the authority of the Metric Conversion Act of 1975 and the Metric Education Act of 1978.

Other business-related activities means measurement sensitive commerical or business directed transactions or programs, i.e., standard or specification development, publications, or agency statements of general applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the procedure or practice requirements of an agency. "Measurement sensitive" means the choice of measurement unit is a critical component of the activity, i.e., an agency rule/regulation to collect samples or measure something at specific distances or to specific depths, specifications requiring intake or discharge of a product to certain volumes or flow rates, guidelines for clearances between objects for safety, security or environmental purposes, etc.

§ 19.22 General Policy.

The Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, section 5164) amended the Metric Conversion Act of 1975 to, among other things, require that each Federal agency, by a date certain and to the extent economically feasible by the end of the fiscal year 1992, use the metric system of measurement in its procurements, grants, and other business-related activities, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms, such as when foreign competitors are producting competing products in non-metric units.

(a) The Secretary of Commerce will appoint a Commerce Department Under Secretary to assist in coordinating the efforts of Federal agencies in meeting their obligations under the Metric Conversion Act, as amended.

(b) Federal agencies shall coordinate and plan for the use of the metric system in their procurements, grants and other business-related activities consistent with the requirements of the Metric Conversion Act, as amended. Federal agencies shall encourage and support an environment which will facilitate the transition process. When taking initiatives, they shall give due consideration to known effects of their actions on State and local governments and the private sector, paying particular attention to effects on small business.

(c) Each Federal agency shall be responsible for developing plans, establishing necessary organizational structure, and allocating appropriate resources to carry out this policy.

§ 19.23 Guidelines.

Each agency shall:

(a) Establish plans and dates for use of the metric system in procurements, grants and other business-related activities;

(b) Coordinate metric transition plans with other Federal agencies, State and local governments and the private sector;

(c) Require maximum practical use of metric in areas where Federal procurement and activity represents a predominant influence on industry standards (e.g.: weapon systems or space exploration). Strongly encourage metrication in industry standards where Federal procurement and activity is not the predominant influence, consistent with the legal status of the metric system as *the preferred system of weights and measures for United States trade and commerce*;

(d) Assist in resolving metric-related problems brought to the attention of the agency that are associated with agency actions, activities or programs undertaken in compliance with these guidelines or other laws or regulations;

(e) Identify measurement-sensitive agency policies and procedures and ensure that regulations, standards, specifications, procurement policies and appropriate legislative proposals are updated to remove barriers to transition to the metric system;

(f) Consider cost effects of metric use in setting agency policies, programs and actions and determine criteria for the assessment of their economic feasibility. Such criteria should appropriately weigh both agency costs and national economic benefits related to changing to the use of metric;

(g) Provide for full public involvement and timely information about significant metrication policies, programs and actions;

(h) Seek out ways to increase understanding of the metric system of measurement through educational information and guidance and in agency publications;

(i) Consider, particularly, the effects of agency metric policies and practices on small business; and

(j) Consistent with the Federal Acquisition Regulation System (48 CFR), accept, without prejudice, products and services dimensioned in metric when they are offered at competitive prices and meet the needs of the Government, and ensure that acquisition planning considers metric requirements.

§ 19.24 Recommendations for Agency Organization.

Each agency shall:

(a) Participate, as appropriate, in the Interagency Council on Metric Policy (ICMP), and/or its working committee, the Metrication Operating Committee (MOC), in coordinating and providing policy guidance for the U.S. Government's transtion to use of the metric system.

(b) Designate a senior policy official to be responsible for agency metric policy and to represent the agency on the ICMP.

(c) Designate an appropriate official to represent the agency on the Metrication Operating Committee (MOC), an interagency committee reporting to the ICMP.

(d) Maintain liaison with private sector groups (such as the American National Metric Council and the U.S Metric Association) that are involved in planning for or coordinating National transition to the metric system.

(e) Provide for internal guidelines, training and documentation to assure employee awareness and understanding of agency metric policies and programs.

§ 19.25 Reporting Requirement.

Each Federal agency shall, as part of its annual budget submission each fiscal year, report to the Congress on the metric implementation actions it has taken during the previous fiscal year. The report will include the agency's implementation plans, with a current timetable for the agency's transition to the metric system, as well as actions planned for the budget year involved to implement fully the metric system, in accordance with this policy. Reporting shall cease for an agency in the fiscal year after it has fully implemented metric usage, as prescribed by the Metric Conversion Act (15 U.S.C. 205b(2).)

§§ 19.26 thru 19.199 [Reserved]

Dated: December 19, 1990.

Robert M. White,

Under Secretary for Technology.

[FR Doc. 90–30568 Filed 12–31–90; 8:45 am]

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Federal Register

Vol. 56, No. 1

Wednesday, January 2, 1991

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FEDERAL REGISTER PAGES AND DATES, JANUARY

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CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: The list of Public Laws for the second session of the 101st Congress has been completed and will resume when bills are enacted into law during the first session of the 102d Congress, which convenes on January 3, 1991.

A cumulative list of Public Laws for the second session was published in Part II of the **Federal Register** on December 10, 1990.

CFR ISSUANCES 1991
Complete Listing of 1990 Editions and Projected January, 1991 Editions

This list sets out the CFR issuances for the 1990 editions and projects the publication plans for the **January, 1991** quarter. A projected schedule that will include the **April, 1991** quarter will appear in the first **Federal Register** issue of April.

For pricing information on available 1990–1991 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. The weekly CFR checklist and the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR titles and parts, revision date and price of each volume.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

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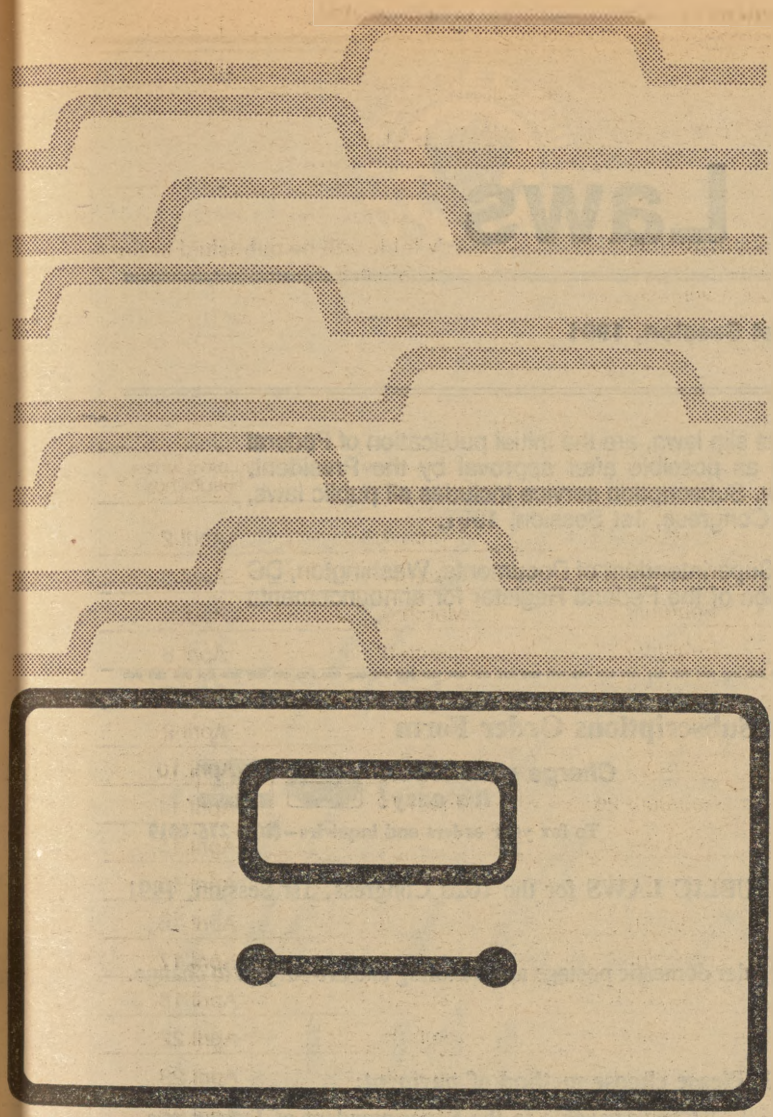
TABLE OF EFFECTIVE DATES AND TIME PERIODS—JANUARY 1991

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
January 2	January 17	February 1	February 19	March 4	April 2
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January 24	February 8	February 25	March 11	March 25	April 24
January 25	February 11	February 25	March 11	March 26	April 25
January 28	February 12	February 27	March 14	March 29	April 29
January 29	February 13	February 28	March 15	April 1	April 29
January 30	February 14	March 1	March 18	April 1	April 30
January 31	February 15	March 4	March 18	April 1	May 1



Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

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SUPPLEMENT: Revised January 1, 1990

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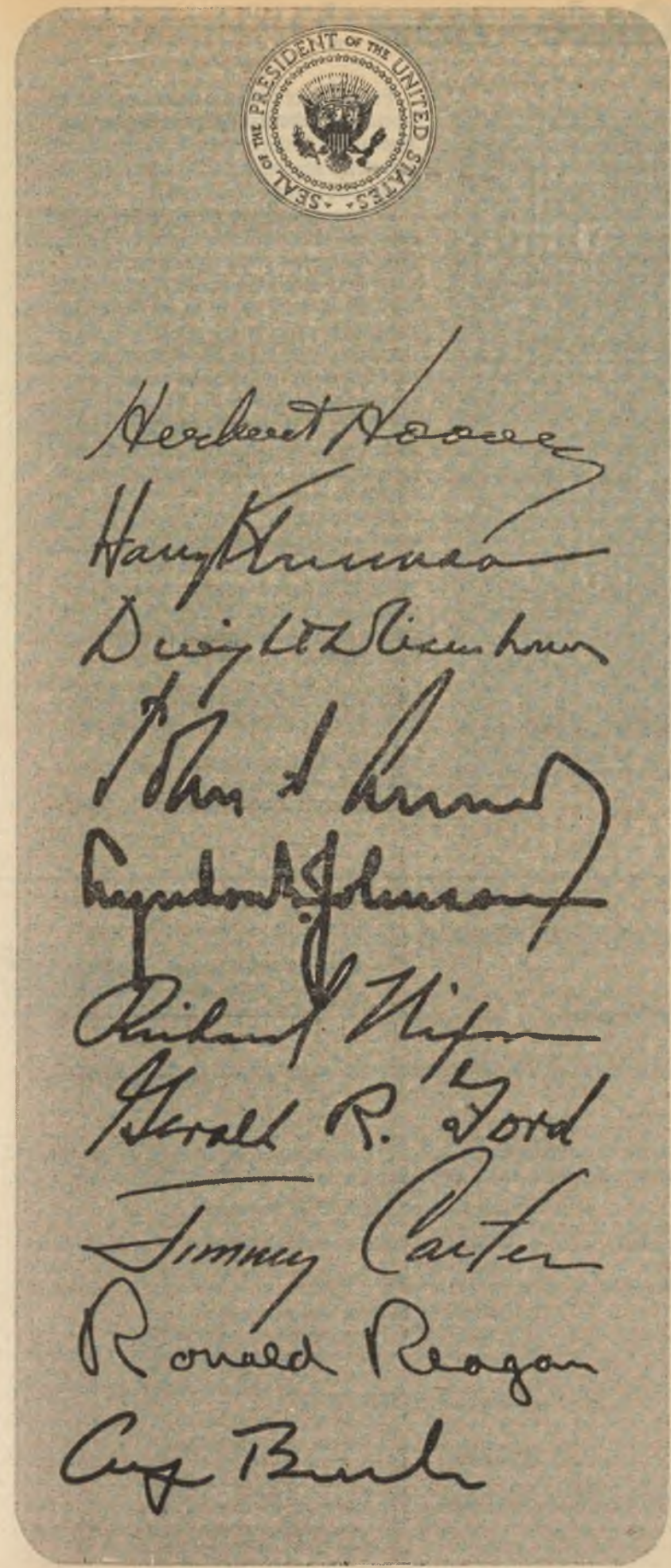
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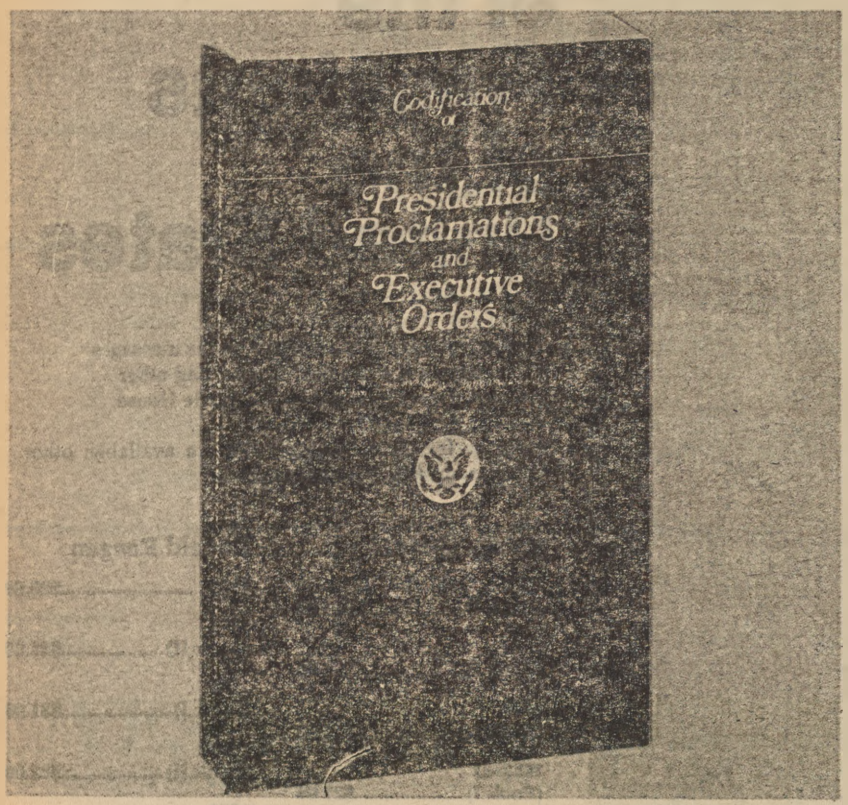
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