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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1150

[DA-89-026]

Dairy Promotion Program; Amendments to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the Dairy Promotion and Research Order. The amendment establishes procedures for denying, suspending or terminating Department certification of qualification of State or regional dairy product promotion, research or nutrition education programs under the National Dairy Promotion Program, and includes the opportunity to petition the Secretary for review of an action.

The Dairy Promotion Program is funded by a mandatory assessment of 15 cents per hundredweight on all milk marketed commercially in the 48 contiguous states. Producers can receive a credit of up to 10 cents a hundredweight for payments made to a qualified program. The criteria that must be met by a State or regional program to be certified as a qualified program are specified in the order and would not be modified by this action.

EFFECTIVE DATE: April 1, 1991.

FOR FURTHER INFORMATION CONTACT: Bonnie Taner, Chief, Promotion and Research Staff, USDA/AMS/Dairy Division, room 2732, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-6909.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Invitation to Submit Comments on Proposed Amendments to the Order: Issued on March 21, 1990; published on March 26, 1990 (55 FR 11024).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a rule on 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. The amendment pertains to procedural matters with regard to certification of qualification of State or regional dairy product promotion, research or nutrition education programs and will not result in a significant economic impact on any entity engaged in the dairy industry. Also, this 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.

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection and recordkeeping requirements contained in part 1150, including § 1150.153, have been approved previously by the Office of Management and Budget (OMB) under OMB Control No. 0581-0147.

Preliminary Statement

The Dairy Promotion Program is funded by a mandatory assessment of 15 cents per hundredweight on all milk marketed commercially in the 48 contiguous states. Producers can receive a credit of up to 10 cents a hundredweight for payments made to State or regional dairy product promotion, research or nutrition education programs that are certified by the Secretary as qualified programs. The order currently specifies the criteria that must be met by State or regional programs to be so certified.

The amendment to the order provides for the denial, suspension or termination of qualification of State or regional programs which do not meet statutory or order requirements at the time of application for certification as qualified programs, or which fail to satisfy such requirements after qualification. In addition, the amendment establishes a procedure for review of any proposed denial, suspension or termination of a program's qualified status. Basically, the amendment provides that any State or regional program may petition the Secretary for a review of the proposed adverse action. The review process provides for an informal hearing to gather evidence relevant to the issue, the preparation of preliminary findings and opportunity for exceptions, and the preparation of a final decision that sets forth the action to be taken and the basis for such action.

A notice of the proposed amendment to the order to establish the review process was published in the Federal Register on March 26, 1990. Interested parties were invited to submit written comments on the proposal by April 25, 1990.

Findings

Fourteen comments were received in response to the invitation to submit written comments on the proposal to establish procedures for denying, suspending or terminating Department certification of qualification of State or regional dairy product promotion, research or nutrition education programs; including the opportunity to petition the Secretary for a review of an action. All fourteen comments received supported the amendment to the order.

Virtually all of the comments indicated that support for the amendment was conditioned on the understanding that such an amendment would not modify the criteria specified in the order that must be met by a State or regional program to be certified as a qualified program. As indicated in the notice of the proposed amendment to the order, such criteria are not being modified. The amendment merely makes it clear that the Secretary's qualification of a State or regional program may be denied, suspended or terminated if the program does not meet the criteria for qualification specified in the order. In addition, the amendment establishes a procedure for the review of any proposed denial, suspension or termination of a program's qualified status. Accordingly, the amendment to the order, as contained in the notice of proposed rulemaking, should be implemented as set forth herein.

List of Subjects in 7 CFR Part 1150

Dairy Products, Milk, Promotion, Research.

It is hereby determined that 7 CFR Part 1150—Dairy Promotion Program be amended as follows:

PART 1150—DAIRY PROMOTION PROGRAM

1. The authority citation for 7 CFR part 1150 continues to read as follows:

Authority: Pub. L. 98–180, 97 Stat. 1128.

2. Section 1150.153 is amended by the addition of a new paragraph (c) that reads as follows:

§ 1150.153 Qualified State or regional dairy product promotion, research or nutrition education programs.

* * * * *

(c) An application for certification of qualifications of any State or regional dairy product promotion, research or nutrition education program which does not satisfy the requirements specified in paragraph (b) of this section shall be denied. The certification of any qualified program which fails to satisfy the requirements specified in paragraph (b) of this section after certification shall be subject to suspension or termination.

(1) Prior to the denial of an application for certification of qualification, or the suspension or termination of an existing certification, the Director of the Dairy Division shall afford the applicant or the holder of an existing certification an opportunity to achieve compliance with the requirements for certification within a reasonable time, as determined by the Director.

(2) Any State or regional dairy product promotion, research or nutrition education program whose application for certification of qualification is to be denied, or whose certification of qualification is to be suspended or terminated shall be given written notice of such pending action and shall be afforded an opportunity to petition the Secretary for a review of the action. The petition shall be in writing and shall state the facts relevant to the matter for which the review is sought, and whether petitioner desires an informal hearing. If an informal hearing is not requested, the Director of the Dairy Division shall issue a final decision setting forth the action to be taken and the basis for such action. If petitioner requests a hearing, the Director of the Dairy Division, or a person designated by the Director, shall hold an informal hearing in the following manner:

(i) Notice of a hearing shall be given in writing and shall be mailed to the last known address of the petitioner or of the State or regional program, or to an officer thereof, at least 20 days before the date set for the hearing. Such notice shall contain the time and place of the hearing and may contain a statement of the reason for calling the hearing and the nature of the questions upon which evidence is desired or upon which argument may be presented. The hearing place shall be as convenient to the State or regional program as can reasonably be arranged.

(ii) Hearings are not to be public and are to be attended only by representatives of the petitioner or the State or regional program and of the U.S. Government, and such other parties as either the State or regional program or the U.S. Government desires to have appear for purposes of submitting information or as counsel.

(iii) The Director of the Dairy Division, or a person designated by the Director, shall be the presiding officer at the hearing. The hearing shall be conducted in such manner as will be most conducive to the proper disposition of the matter. Written statements or briefs may be filed by the petitioner or the State or regional program, or other participating parties, within the time specified by the presiding officer.

(iv) The presiding officer shall prepare preliminary findings setting forth a recommendation as to what action should be taken and the basis for such action. A copy of such findings shall be served upon the petitioner or the State or regional program by mail or in person. Written exceptions to the findings may be filed within 10 days after service thereof.

(v) After due consideration of all the facts and the exceptions, if any, the Director of the Dairy Division shall issue a final decision setting forth the action to be taken and the basis for such action.

Effective date: April 1, 1991.

Signed at Washington, DC on February 22, 1991.

Jo Ann R. Smith,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 91–4775 Filed 2–27–91; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Part 1980

Revision of Guaranteed Farmer Program Loan Regulations

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Farmers Home Administration (FmHA) amends its guaranteed loan regulations to provide for an Interest Assistance Program to replace the existing Interest Rate Buydown Program. These changes are made in order to (1) increase the potential level of government reimbursement for interest rate reductions made by lenders on guaranteed farms loans; (2) extend the potential term of interest rate reduction on guaranteed farm loans; (3) provide various administrative changes, clarification of regulations and changes of forms necessary to implement the Interest Assistance Program; and (4) extend authorization for the program through September 30, 1995. These changes in regulations are made, in part, to implement recently enacted legislation.

The legislation also extended the authorization for the "Demonstration Project for Purchase of Certain Farm Credit System Acquired Farmland" for one year, through January 6, 1992.

DATES: Effective February 28, 1991. Comments must be received on or before April 29, 1991.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, USDA, room 6348, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dale R. Carr, Loan Officer, Guaranteed Loan Branch, Farmers Home Administration, USDA, room 5440, Washington, DC 20250, telephone (202) 475–4017.

SUPPLEMENTARY INFORMATION:

Classification

This interim rule has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor, because there will not be an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to notice 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983),

and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans, Farm Operating Loans, and Farm Ownership Loans are excluded with the exception of nonfarm enterprise activity from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loans Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404 Emergency Loans
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.416 Soil and Water Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Discussion of the Interim Rule

It is the policy of the Department to publish notice of proposed rulemaking with a comment period before rules are issued, even though 5 U.S.C. 553 exempts rules relating to loans, grants, benefits, or contracts. However, exemptions are permitted where an agency finds, for good cause, that compliance would be impracticable, unnecessary, or contrary to the public interest.

In addition to broadening the authority for the interest rate reduction program, the legislation which is the basis for this rule reduced funding for loans made directly by FmHA to farmers by approximately 40% from FY 1990 authorizations.

In order to assist a similar number of farmers as those who needed assistance in FY 1990, over 5,000 farmers who received direct assistance in FY 1990 will need to be moved to guaranteed loan programs in FY 1991.

A primary tool in effecting this move is the enhanced interest reduction program. If FmHA publishes this rule under conventional proposed rule-making authorities, the regulation could not possibly be implemented until late spring of 1991. This is effective beyond the period when 1991 crop season loans are made. Therefore, without publication of this rule for immediate implementation under interim final rule making, it appears that a large number of farmers would be unable to obtain sufficient credit to operate in 1991.

FmHA is therefore publishing this regulation as interim final. Comments will be solicited and taken into account before publication of a final rule.

The authorization of the program is extended to September 30, 1995.

Major items changed in this rule include the following items:

The title of the program is changed from Interest Rate Buydown to Interest Assistance to avoid confusion with the earlier version of the program.

Provisions limiting the maximum term of the interest rate reduction to 3 years are revised to permit up to 10 years.

The provision which limited FmHA reimbursement of 50% of the lender's interest reduction up to a maximum annual reimbursement of 2% of the outstanding principal is revised to allow FmHA to reimburse 100% of the lender's interest reduction up to a maximum rate which will be established and published periodically by the Administrator of FmHA, within statutory limits.

The requirement for the lender to document, as part of the request for assistance, that the borrower will be able to project a positive cash flow during the year after the interest rate reduction expires is deleted.

Provisions are made for the level of Interest Assistance to be adjusted annually based on a review of the borrower's need for continued assistance.

The definition of a positive case flow under his program is changed to make it consistent with guaranteed farm loans which are not assisted under this program. A positive case flow will include the requirement for a 10 percent debt-service reserve.

Provisions are added to explain the treatment of loans made under the existing Interest Rate Buydown Program after the Interest Assistance Program is implemented.

Various other amendments have been made to provide clarification on the administration of the program.

Various forms referred to in the Exhibit have been modified in order to reflect the changes made in the regulations, and a new Interest Assistance Agreement form has been developed.

The reporting and recordkeeping requirements contained in this rule have been approved on an emergency basis by the Office of Management and Budget through May 1991.

The authorization for the "Demonstration Project for Purchase of Certain Farm Credit System Acquired Farmland" is extended through January 6, 1992.

List of Subjects in 7 CFR Part 1980

Agriculture, Loan programs—Agriculture, Grant programs, Nonprofit corporations, Home improvement, Livestock loan programs—Business and Industry—Rural Development Assistance, Loan programs—Housing and Community Development, Loan programs—Community Programs, Rural areas.

Therefore, FmHA amends chapter XXIII, title 7, Code of Federal Regulations as follows:

PART 1980—GENERAL

1. The authority citation for part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—General

2. § 1980.83(a) is revised to read as follows:

§ 1980.83 FmHA Forms.

(a) *FmHA forms incorporated in this subpart.* Forms FmHA 449–34, "Loan Note Guarantee," FmHA 449–35, "Lender's Agreement," and FmHA 449–36, "Assignment Guarantee Agreement," are incorporated in this subpart A, made a part hereof, and appear as appendices A, B, and C in the **Federal Register.** Forms FmHA 1980–27, "Contract of Guarantee (Line of Credit)," FmHA 1980–38, "Lender's Agreement (Line of Credit)," FmHA 1980–15, "Conditional Commitment for Contract of Guarantee (Line of Credit)," FmHA 1980–25, "Request for Guarantee, (Farmer Program Loans)," Form FmHA 1980–58, "Interest Rate Buydown Agreement," Form FmHA 1980–24, "Request Interest Assistance/Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender," and Form FmHA 1980–64, "Interest Assistance Agreement (Farmer Program Loans)," are incorporated in this subpart and are made a part hereof and appear as appendices D, E, F, G, H, I, and J of 7 CFR part 1980, subpart A in the **Federal Register.** Copies of the forms may be obtained from any FmHA office.

* * * * *

3. Section 1980.83 (b) is amended by adding the following form reference at the end of the listing of forms:

§ 1980.83 FmHA Forms.

* * * * *

(b) * * *

FmHA

Form no.	Title of form	Purpose and code
*	*	*
1940–3	Request for Obligation of Funds—Guaranteed Loans.	Used by FmHA to obligate guaranteed loan funds, interest assistance funds, and interest rate buydown funds.
*	*	*

3a. Section 1980.100 is revised to read as follows:

§ 1980.100 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0024. Public reporting burden for this collection of information is estimated to vary from 10 minutes to 28 hours per response, with an average of .86 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575–0024), Washington, DC 20503.

4. Appendix I of subpart A of part 1980 is revised to read as follows:

BILLING CODE 3410-07-M

USDA-FARMERS HOME ADMINISTRATION

FORM APPROVED
OMB NO. 0575-0079

Form FmHA 1980-24
(Rev. 1-91)

REQUEST INTEREST ASSISTANCE/INTEREST RATE BUYDOWN/ SUBSIDY PAYMENT TO GUARANTEED LOAN LENDER

Transaction 4031

1. CASE NO. ST CO BORROWER'S ID 0 0	2. BORROWER NAME	
3. LENDER ID NO.	4. LENDER NAME	5. BRANCH NO.
6. LOAN NO.	7. ORIGINAL LOAN AMOUNT $	
8. BEGINNING CLAIM PERIOD MO DA YR	9. END CLAIM PERIOD MO DA YR	
10. PRINCIPAL BALANCE AT BEGINNING OF CLAIM PERIOD $	11. ACCRUED INTEREST AT BEGINNING OF CLAIM PERIOD $	
12. AMOUNT OF PRINCIPAL ADVANCED DURING CLAIM PERIOD $	13. INTEREST PAYMENTS DURING CLAIM PERIOD $	
14. PRINCIPAL PAYMENTS DURING CLAIM PERIOD $	15. ACCRUED INTEREST AT END OF CLAIM PERIOD $	
16. PRINCIPAL BALANCE AT END OF CLAIM PERIOD $	17. INTEREST PAYABLE $	
18. FINAL PAYMENT 1 = YES 2 = NO	19. CHECK ISSUED CODE *(Completed by FmHA)* 1 = SYSTEM GENERATED CHECK 2 = MANUAL CHECK 3 = NO CHECK ISSUED	20. DATE MANUAL CHECK ISSUED *(Completed by Finance Office)* MO DA YR

REQUEST FOR CONTINUATION/ADJUSTMENT OF INTEREST ASSISTANCE

TERM OF NEXT INTEREST ASSISTANCE PERIOD 21. BEGINNING DATE MO DA YR	22. ENDING DATE MO DA YR	23. PERCENT OF ASSISTANCE REQUESTED NEXT PERIOD
24. TERMINATE INTEREST ASSISTANCE AGREEMENT 1 = YES IF YES ALL ASSISTANCE FUNDS FOR THE LIFE OF THE ASSISTANCE ARE DEOBLIGATED (NO FUTURE PAYMENTS) 2 = NO	25. EFFECTIVE DATE OF TERMINATION MO DA YR	26. REASON FOR TERMINATION CODE
27. AUTHORIZED LENDER'S SIGNATURE *I hereby certify that the above claim is accurate and consistent with the terms of FmHA regulations and the Interest Assistance Agreement or Interest Rate Buydown Agreement. The Request for Continuation/ Adjustment was determined based on the borrower need in accordance with FmHA regulations and the Interest Assistance Agreement.*	28. TITLE	29. DATE

APPROVAL (FmHA USE ONLY)

30. Percent of Interest Assistance Approved for next period.

I have reviewed the above Request for Payment of Interest Assistance/Interest Rate Buydown/Subsidy and/or Request for Continuation/Adjustment of Interest Assistance. The requested payment and/or approved level of continued interest assistance is consistent with the supporting documentation, FmHA regulations and the Interest Assistance Agreement/Interest Rate Buydown Agreement.

31. AUTHORIZED FmHA OFFICIAL (SIGNATURE)	32. TITLE	33. DATE

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575-0079), Washington, D.C 20503 Please DO NOT RETURN this form to either of these addresses. Forward to FmHA only

BILLING CODE 3410-07-C

FUNCTION OF FORM

Completed by lender to request periodic interest rate buydown payments or interest assistance payments for Farmer Program Loans or subsidy payments for EM Actual Loss Loans. This form is also used to continue or adjust interest assistance on the account.

PROCEDURE REFERENCE

FmHA Instruction 1980–B

PREPARED BY

Lender in consultation with the FmHA

ADDITIONAL INFORMATION

If this form is being completed to establish a continuation of interest assistance after a year with zero percent interest assistance, items 1 through 16 should be completed as usual; item 17 will be 0.00; item 18 as usual; item 19 as 3 (no check issued); and items 21 through 33 as usual.

DISTRIBUTION

Original to Finance Office; Copy to Servicing Office; and Copy to Lender.

INSTRUCTIONS FOR PREPARATION

Item 1. Enter the Borrower's Case Number. Show the state and county code and the borrower's Social Security or Internal Revenue Service Tax Identification Number.
Example: 2 9 0 3 7 0 9 8 7 6 5 4 3 2 8

Item 2. Enter Borrower's Name (Last Name First)—abbreviate when necessary.
Example: T H O M P S O N R O B E R T L

Item 3. Enter the Lender's Internal Revenue Service Tax Identification Number.
Example: 0 7 6 5 4 3 2 4 5 6

Item 4. Enter Lender's Name—abbreviate when necessary.
Example: F I R S T N A T I O N A L B A N K

Item 5. Enter the FmHA assigned branch number.
Example: 0 3

Item 6. Enter FmHA assigned loan number.
Example: 0 2

Item 7. Enter the original loan amount.
Example: $ 5 6 0 0 0. 0 0

Item 8. Enter the beginning date of the current buydown, interest assistance or subsidy period.
Example: The loan/buydown/interest assistance/subsidy closing date is 05–04–88; initial request beginning date is 05–04–88; subsequent requests will begin with the ending date submitted on the previous request for payment.

Item 9. Enter the ending date of the current buydown, interest assistance, or subsidy period. The ending date on this request equals the beginning date on the next request.

NOTE: Interest rate buydown and interest assistance claims may only be submitted for a 12 month period unless it is the first or last claim.

Subsidy payments on EM Actual Loss Loans may be submitted for a 6 or 12 month period only.

If the Contract of Guarantee or Loan Note Guarantee is or becomes void or unenforceable, or terminates, or a transfer and assumption occurs, the subsidy/buydown/interest assistance should be claimed up to that date. In the case of assumptions to eligible transferees, the beginning date on the transferred loan is the assumption date; and the inital claim may be at anytime with future claims at 12-month intervals, except as described above.

Item 10. Enter the principal balance of the loan at the beginning of the subsidy period. If this is the first claim on a new loan, this amount will match the amount advanced on Form FmHA 1980–19, Loan Closing Report. If this loan was a buydown or interest assistance on an existing loan, this amount will match the loan amount on Form FmHA 1980–19. For subsequent claims the principal balance must equal the ending principal balance on the previous claim.

ALL INTEREST CALCULATIONS ON THIS FORM ARE BASED ON THE BORROWER'S EFFECTIVE INTEREST RATE.

Item 11. Enter the borrower's accrued interest at the beginning of the subsidy period. This accrued interest must equal the ending accrued interest shown on the previous claim.

Item 12. Enter the amount of principal disbursed during the current subsidy period. This amount does not include protective advances. If zero, enter 0.00.

Item 13. Enter the total amount of interest payments recevied from the borrower during the current claim period. If zero, enter 0.00.

Item 14. Enter the total amount of principal payments received from the borrower during the current claim period. If zero, enter 0.00.

Item 15. Enter the accrued interest balance at the end of the current claim period. If zero, enter 0.00. (This amount is the beginning accrued interest balance on the next claim.)

Item 16. Enter the principal balance at the end of the current claim period. If zero, enter 0.00. (This amount is the beginning principal balance on the next claim.)

Item 17. Enter the amount of interest rate buydown/interest assistance/subsidy payable.

BUYDOWN PAYMENT CALCULATION

(Item 13 + 15 − 11) × Buydown Rate Paid by FmHA ÷ Borrower's Effective Rate

EM ACTUAL LOSS SUBSIDY CALCULATION

(Item 13 + 15 − 11) × Loan Subsidy Rate ÷ Interest Rate on Note or Assumption Agreement

INTEREST ASSISTANCE PAYMENT CALCULATION

(Item 13 + 15 − 11) × Interest Assistance Rate ÷ Borrower's Effective Rate

Item 18. Enter the applicable code to identify if this is the final payment.

Item 19. Completed by FmHA servicing office or Finance Office.
1 = System Generated Check
2 = Manual Check (Finance Office Only)
3 = No Check Issued

Item 20. Completed by Finance Office Only. The Finance Office will enter the check issue date for manual checks only (item 19 equals 2).

ITEMS 21 THROUGH 26 ARE COMPLETED ONLY IF THE BORROWER IS AN INTEREST ASSISTANCE BORROWER.

Item 21. Enter the beginning date of the next interest assistance period.

Item 22. Enter the ending date of the next interest assistance period.

Item 23. Enter the percent of assistance requested for the next period. IF THIS PERCENT IS GREATER THAN THE PERCENT ON THE MASTER INTEREST ASSISTANCE AGREEMENT, FUNDS MUST BE OBLIGATED PRIOR TO SIGNING THIS FORM. If the borrower will need zero percent next year, enter 00.0000.

Item 24. Enter the applicable code.
1 = Yes
2 = No

IF CODE 1 (YES) IS ENTERED, THE ASSISTANCE FUNDS FOR THE REMAINING LIFE OF THE AGREEMENT ARE DEOBLIGATED; THEREFORE, THERE ARE NO FUTURE PAYMENTS.

Item 25. Enter the effective date of the interest assistance termination. Complete only if item 24 equals 1.

Item 26. Enter the reason for termination code. Complete only if item 25 is complete.
01—Borrower is no longer eligible for interest assistance.
02—Loan is paid in full.

Item 27. THIS FORM WILL BE RETURNED IF IT IS NOT SIGNED. Enter the authorized lender's signature.

Item 28. Enter the title of the person authorized to sign this form.

Item 29. Enter the date signed by the lender's representative.

Item 30. Enter the percent of interest assistance approved. TO BE COMPLETED BY FmHA SERVICING OFFICE ONLY. This amount may not exceed the Maximum Rate of Interest Assistance which was obligated and is stated on the Interest Assistance Agreement.

Item 31. Enter the authorized FmHA representative signature for approval.

Item 32. Enter the title of the authorized FmHA representative.

Item 33. Enter the date signed by FmHA representative.

5. Appendix J is added to subpart A of part 1980 and reads as follows:

BILLING CODE 3410-07-M

USDA-FmHA
Form FmHA 1980-64
(1-91)

FORM APPROVED
OMB NO. 0575-0079

☐ Loan Note Guarantee
☐ Contract of Guarantee

Type of Loan _____
7 CFR Part 1980
Subpart B

INTEREST ASSISTANCE AGREEMENT
(Farmer Programs)

State
County
Date of Note/Line of Credit Agreement

Borrower	Borrower's FmHA ID No.
Lender	Lender's IRS ID Tax No.
Lender's Address	Principal Amount of Loan/Line of Credit Ceiling

The principal amount of loan or line of credit is evidenced by _____ note(s) or line of credit agreement(s) described below. This instrument is attached to note or line of credit agreement dated _____ in the face amount of $_____ and is number _____ of _____.

Copies of the lender's Loan Note Guarantee, or Contract of Guarantee for a line(s) of credit, and any Assignment Guarantee Agreement, if applicable (Loan Note Guarantee cases only) are attached to this Agreement as a part of it.

Lender's Note No.	*Note/Line of Credits Agreement*	*Note Interest Rate*	*Fixed or Variable*

This agreement is effective beginning _____ and expires on _____. In consideration of the subject lender's reduction of the interest rate charged the borrower's account, the United States of America, acting through the Farmers Home Administration of the United States Department of Agriculture (called FmHA) pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) agrees that in accordance with and subject to the conditions and requirements in this agreement it will reimburse the lender for a maximum of _____ percentage points per annum of the Interest Reduction. The full amount of Interest Assistance payments made by FmHA to the lender will be passed on to the borrower.

For the initial period of this agreement beginning _____ and ending _____,

FmHA agrees to reimburse the lender for _____ percentage points per annum of the interest reduction. The rate of Interest Assistance in future years will be adjusted annually in accordance with the conditions of this agreement. The maximum percentage rate of Interest Assistance granted by FmHA during any given period will never exceed 4 percent.

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575-0079), Washington, D.C.20503. Please DO NOT RETURN this form to either of these addresses. Forward to FmHA only.

BILLING CODE 3410-07-C

Conditions of Interest Assistance

1. Interest Rates

The lender may charge a fixed or variable interest rate which is specified in this agreement during the term of the Interest Assistance Agreement. The type of rate must be the same as the type of rate in the underlying note or line of credit agreement.

The interest rate that the lender will charge will be clearly indicated in the Request for Interest Assistance. If a variable rate will be charged, the base rate, basis points and adjustment interval not only will be clearly set forth in the Request for Interest Assistance, but also will comply with § 1980.175(e) of 7 CFR part 1980, subpart B. If the lender uses a variable rate note or line of credit agreement, the rate may only be changed once each year. During the term of the Interest Assistance Agreement, variable interest rates may not be increased by more than a total of 3 percent above the effective note rate of interest at the time this agreement is entered into. This cap on interest increases will be clearly spelled out in the note/line of credit agreement or in an allonge attached to the note/line of credit agreement or other legally effective amendment of the interest rate; however, no new note or line of credit agreement may be issued. The date of interest rate adjustment shall coincide with the annual payment date on loans/lines of credit with annual payments. On other loans/lines of credit the annual review date will be clearly set out in the note/line of credit agreement and has been set out on this agreement as the ending date of the initial period of Interest Assistance.

2. Interest Assistance Payments

FmHA payments made in connection with Interest Assistance will be calculated using a 360 or 365 day year method on a declining balance. The lender will indicate on Form FmHA 1980–19, "Guaranteed Loan Closing Report," the preferred method, which may not change once established.

3. Annual Interest Assistance Claims and Payments

The initial Interest Assistance claim will be prepared by the lender using Form FmHA 1980–24, "Request Interest Assistance/Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender," within 60 days after the ending date of the initial period specified in this agreement. Subsequent claims will be filed by the lender on or after the same date each year thereafter but no later than 60 days after the anniversary of the ending date of the initial Interest Assistance claim. Upon full payment of the note or line of credit agreement the lender will immediately prepare Form FmHA 1980–24 and mail a copy to the FmHA servicing office.

4. Request for Adjustment/Continuation of Interest Assistance

For all loans which extend beyond the ending date of the initial review period, the lender will analyze the borrower's need for continued Interest Assistance in accordance with the methodology defined in Exhibit D to supart B of 7 CFR, part 1980. The lender will then submit the Request for Continuation/Adjustment of Interest of Assistance by completing the applicable section of Form FmHA 1980–24. The request for payment of the claim from the previous period will not be processed until the analysis of the borrower's need and request for Continuation/Adjustment has been made by the lender.

5. When Interest Assistance Payments Cease

For Loan Note Guarantee cases, when FmHA purchases a portion of a loan, Interest Assistance payments on that portion will cease. Interest Assistance payments will cease upon termination of the Loan Note Guarantee or Contract of Guarantee, upon reaching the expiration date set forth in this agreement or upon cancellation by the Government. Interest Assistance payments shall cease upon the assumption/transfer of the loan if the transferee was not liable for the debt at the time the assistance was granted. The lender shall complete Form FmHA 1980–24, "Request Interest Assistance/Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender," to request payment for the Interest Assistance through the date of the transfer or assumption of the guaranteed loan.

6. Cash Flow

A cash flow budget of operation must show that a positive cash flow can be expected during the initial 24-month period of assistance. For those loans/lines of credit with terms less than 24 months, the operation must show a positive cash flow for the term of the loan/line of credit. Cash flow budget and positive cash flow are defined in Exhibit D to supart B of 7 CFR, part 1980, as applicable, and must be calculated in accordance with 1980.113(d)(8) of subpart B of part 1980.

7. Cancellation of Interest

Lender certifies that the amount of interest reduction on the subject borrower's account will be permanently cancelled as it becomes due and no attempt will be made to collect that portion of the debt which will be paid by FmHA.

8. Regulatory Changes

This agreement is subject to the present regulations of the FmHA and its future regulations not inconsistent with any provisions of this agreement.

9. Cancellation

The Interest Assistance Agreement is incontestable except for fraud or misrepresentation of which the lender has actual knowledge at the time this agreement is executed or for which the lender participates in or condones.

10. Excessive Interest Assistance

The Government may amend or cancel this agreement and collect from the lender any amount of reduction granted as a result of incomplete or inaccurate information, computation errors, or other circumstances which resulted in Interest Assistance payments that the lender was not entitled to receive.

11. Access to Lender's Files

Upon request by FmHA, the lender will permit representatives of FmHA (or other agencies of the U.S. Department of Agriculture authorized by that Department) to inspect and make copies of any of the records of the lender pertaining to FmHA guaranteed loans. Such inspection and copying may be made during regular office hours of the lender, or any other time the lender and FmHA find convenient.

To the extent permitted by law and the supervisory agency, the lender agrees to allow FmHA access to audit findings by the lender's supervising agency when examining Interest Assistance claims.

ATTEST: _____ *(SEAL)*
Address:

ATTEST: _____ *(SEAL)*
LENDER:
By

Title

UNITED STATES OF AMERICA FARMERS HOME ADMINISTRATION

By

Title

ACKNOWLEDGED
Borrower

Subpart B—Farmer Program Loans

6. Section 1980.101(a) is amended in the seventh sentence by changing the phrase "Interest Rate Buydown" to read "Interest Assistance."

7. Section 1980.110(b) is amended in the first sentence by changing form title "Request Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender" to read "Request Interest Assistance/Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender."

8. Paragraph C. of the "Administrative" material at the end of § 1980.113 is revised to read as follows:

§ 1980.113 Receiving and processing applications.

* * * * *

C. Immediately after a preliminary or complete application is received, and prior to County Committee action, the County Supervisor will send attachment 3 to exhibit D of this subpart which describes the Interest Assistance Program to any applicant and lender who did not request Interest Assistance as part of the guaranteed loan application.

9. Paragraph A.1. of the "Administrative" material at the end of § 1980.115 is amended by changing "Form FmHA 1940–1, Request for Obligation of Funds," to read "Form FmHA 1940–3, Request for Obligation of Funds—Guaranteed Loans."

10. Paragraphs B.1. and B.2. of the "Administrative" material at the end of § 1980.115 are revised to read as follows:

§ 1980.115 County Committee review.

* * * * *

B. *The approval official will:*

1. Approve or disapprove all guaranteed applications not later than 45 calendar days after receipt of completed applications, execute Forms FmHA 1940–3, 449–14 and/or 1980–15 and distribute the copies in accordance with the FMI. In order to meet the prompt approval requirement when funds are temporarily exhausted and the loan will be approved, Form FmHA 1940–3 must be signed.

When funds are exhausted, a Conditional Commitment for Guarantee will not be executed until such time as funds become available and have been obligated in connection with the guarantee request.

2. Set forth in the space provided on Form FmHA 449–14 (A.2. above) or Form FmHA 1980–15 (A.2. above) any special conditions of approval, including requirements for security, improved management practices relating to highly erodible land and conversion of wetland found in exhibit M of subpart G of part 1940 of this chapter, and type of frequency of financial reports required by FmHA but not required by the lender. When Form FmHA 1980–15 is executed, the approval official will add the requirement that the lender will submit to FmHA a current financial statement and cash flow prepared in accordance with § 1980.113(d)(8) of this subpart for prior approval of advances to be made for the second and third years of a line of credit. The loan approval official will also include the following requirement as a condition of approval on the Conditional Commitment:

"The lender agrees that, if liquidation of the account becomes imminent, the lender will consider the borrower for Interest Assistance under exhibit D of subpart B of 7 CFR part 1980, and request a determination of the borrower's eligibility by FmHA. The lender may not initiate foreclosure action on the loan (or line of credit if Form FmHA 1980–15 is used) until 60 calendar days after a determination has been made with respect to the eligibility of the borrower to participate in the Interest Assistance Program."

11. Section 1980.122 of subpart B is amended in the fifth sentence by changing the title of Form FmHA 1980–24 from "Request Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender" to read, "Request Interest Assistance/Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender."

12. Section 1980.124(b)(5) is revised to read as follows:

§ 1980.124 Consolidation, rescheduling, reamortizing and deferral.

* * * * *

(b) * * *

(5) EM loans for actual losses, EM major adjustment loans for real estate purposes, OL loans secured by real estate, OL Contract of Guarantee lines of credit with unlike terms and OL loans/lines of credit with an outstanding Interest Rate Buydown Agreement, Interest Assistance Agreement, or Shared Appreciation Agreement will not be consolidated.

* * * * *

§ 1980.124 [Amended]

13. Section 1980.124(b)(9) is amended in the second sentence by removing the words "consolidated OL loan or," "still," and "consolidation or," respectively, and by adding the following sentence at the end of the paragraph: "If the rescheduled OL loan/line of credit has an outstanding Interest Assistance Agreement, the interest rate will not exceed the rate of the original Interest Assistance Agreement."

§ 1980.124 [Amended]

14. Section 1980.124(c)(4) is amended by adding the following sentence at the end of the paragraph: "If the reamortized FO or SW loan has an outstanding Interest Assistance Agreement, the interest rate will not exceed the rate of the original Interest Assistance Agreement."

§ 1980.125 [Amended]

15. Section 1980.125(a) is amended in the first sentence by changing the phrase "an Interest Rate Buydown" to read "Interest Assistance."

§ 1980.125 [Amended]

16. Section 1980.125(a)(1) is amended in the third sentence by changing the phrase "an Interest Rate Buydown" to read "Interest Assistance"; and in the fourth sentence by striking out the phrase "and the lender can achieve a positive cash flow at the end of the Interest Rate Buydown period."

§ 1980.125 [Amended]

17. Section 1980.125(b)(2) is amended by changing the phrase "an Interest Rate Buydown" to read "Interest Assistance."

§ 1980.145 [Amended]

18. Section 1980.145(b) is amended in the first sentence by changing the phrase "Interest Rate Buydown" to read "Interest Assistance"; and in the third sentence by changing "Attachment 1" to read "Attachment 3."

§ 1980.175 [Amended]

19. Section 1980.175(e)(4) is amended in the first sentence by changing "Exhibit D" to read "Exhibit E."

20. Section 1980.175 is amended by adding paragraph (e)(6) to read as follows:

§ 1980.175 Operating loans.

* * * * *

(e) * * *

(6) The lender and borrower may collectively effect a temporary reduction in the interest rate when processing an Interest Assistance under exhibit D of this subpart. The lender may charge a fixed or variable interest rate during the term of the Interest Assistance Agreement. The type of rate must be the same as the type of rate in the underlying note or line of credit agreement. If the lender uses a variable rate, the rate may only be changed once each year. During the term of the Interest Assistance Agreement, variable interest rates may not be increased by more than a total of 3 percent above the effective note rate of interest at the time this agreement is entered into. This cap on interest increases will be clearly spelled out in the note/line of credit agreement or in an allonge attached to the note/line of credit agreement or other legally effective amendment of the interest rate; however, no new note or line of credit agreement may be issued. The date of interest rate adjustment shall coincide with the annual payment date on loans/lines of credit with annual payments. On other loans/lines of credit, the annual review dates will be clearly set out in the note/line of credit agreement.

* * * * *

20a. § 1980.200 is revised to read as follows:

§ 1980.200 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0079. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 4 hours per response, with an average of 1.21 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575–0079), Washington, DC 20503.

21. Exhibit A to subpart B is amended in the first undesignated paragraph following paragraph IV. B. in the first sentence by changing the phrase "an Interest Rate Buydown" to read "Interest Assistance"; and in the second

sentence of the same paragraph by changing the words "Interest Rate Buydown" to read "Interest Assistance Program."

22. Exhibit C to subpart B is amended by adding the following forms references at the end of the listing of forms:

Exhibit C—Application Processing for Guaranteed Farmer Program Loans

FmHA form No.	Title	Requirement
*	* *	* *
1980-24	Request Interest Assistance/ Interest Rate Buydown/ Subsidy Payment to Guaranteed Lender	1980-B: 1980.110(b); Exhibit D; Exhibit E
1940-3	Request for Obligation of Funds—Guaranteed Loans	1980-B: 1980.83(b); 1980.115 Administrative A.1., B.1.; Exhibit D; Exhibit E

23. Exhibit D to subpart B and attachments 1 and 2 are revised and Attachment 3 is added to read as follows:

Exhibit D—Interest Assistance Program

I. General

This exhibit contains the policies and procedures pertaining to an Interest Assistance Program for guaranteed Operating (OL) loans and lines of credit described in § 1980.175 of this subpart, guaranteed farm ownership (FO) loans described in § 1980.180 of this subpart and guaranteed soil and water loans described in § 1980.185 of this chapter. Subparts A and B of part 1980 are applicable to this exhibit except as modified by Exhibits A and E of this subpart and this exhibit. Authority to enter into the Guaranteed Loan Assistance Agreement is provided for in this exhibit and expires September 30, 1995.

II. Introduction

The authorities contained in this exhibit provide lenders with a tool to enable them to provide credit to operations of not larger than family farms who are temporarily unable to project a positive cash flow as defined in paragraph III D of this exhibit without a reduction in the interest rate.

This exhibit also requires a lender who has a guaranteed loan/line of credit which is not already involved in the Interest Assistance Program or the earlier Interest Rate Buydown Program to agree that if liquidation of the account becomes imminent, the lender will consider the borrower for Interest Assistance under this exhibit and request a determination of the borrower's eligibility by FmHA. The lender may not initiate foreclosure action on the loan until 60 days after a determination has been made with respect to the eligibility of the borrower to participate in this program.

FmHA will enter into an agreement with lenders who participate in this program. The lender will reduce the interest rate paid by the borrower on a loan/line of credit. FmHA will make annual interest assistance payments to the lender equal to the amount of interest reduction on the loan. Agreements made with a lender under this exhibit will in no case provide for payments that exceed the Maximum Rate of Interest Assistance Available (MRIAA) at the time of approval. The MRIAA is defined in this exhibit and will be published periodically in FmHA Instruction 440.1, which is available in any FmHA office.

III. Definitions

A. *Projected Average Balance (PAB)*—The average amount of principal projected to be outstanding on a loan during a particular plan period. For purposes of the exhibit this amount will be calculated as follows:

1. For fully advanced loans with annual payments use the principal balance of loan at the beginning of the plan/review period.

2. For lines of credit and other loans that will not be fully advanced on the effective date of the annual Interest Assistance claims period or loans where payments are scheduled to be made on other than an annual basis, the average balance will be computed from the proposed debt repayment schedule or monthly cash flow budget. The ending principal balance on the loan/line of credit for each month of the plan will be totaled and divided by twelve.

B. *Cash Flow Budget*—A projection listing all anticipated cash inflows (including all farm income, nonfarm income and all loan advances) and all expenses to be incurred by the borrower during the period of the budget (including all farm and nonfarm debt service and other expenses). Production records and prices used in the preparation of a cash flow will be calculated in accordance with § 1980.113(d)(8) of this subpart. A cash flow budget may be completed either for the entire review period (12 months, 24 months, or the life of the loan, as appropriate) or it may be prepared with a breakdown of cash inflows and outflows for each month of the review period. The latter type is referred to as a "monthly cash flow budget." A monthly cash flow budget, which includes the expected outstanding operating credit balance for the end of each month, must be completed for all lines of credit and loans made for annual operating purposes.

C. *Interest Assistance Agreement—(Form FmHA 1980-64).* The signed agreement between FmHA and the lender setting forth the terms and conditions of the Interest Assistance. The agreement will be executed by FmHA and the lender. The borrower will acknowledge the agreement by signing it.

D. *Positive Cash Flow*—A positive cash flow must project that all of the anticipated cash farm and nonfarm income will equal or exceed all the anticipated cash outflows plus the required debt service reserve for the period of the plan. Production records and prices used in the preparation of a positive cash flow will be in accordance with § 1980.113(d)(8) of this subpart. A positive cash flow must show that a borrower will be at least able to:

(1) Pay all operating expenses and all taxes which are or will become due during the projected farm budget period.

(2) Meet scheduled payments on all debts, open accounts and carryover debts including delinquent taxes.

(3) Provide a reserve of at least 10 percent in addition to the loan/line of credit installments due and payable as recorded in Table K of the Farm and Home Plan or other similar plans of operation acceptable to FmHA. The reserve is to provide for risk and uncertainties associated with the farming operation so as to support the projection that the total estimated cash income will equal or exceed the total estimated cash expenses to be incurred for the initial 24-month period.

(4) Provide family living expenses for an individual borrower's family or for the family of the farm operator in the case of a cooperative, corporation, partnership, or joint operation borrower. Families include the dependents of the borrower/farm operator which reside in the same household.

E. *Maximum Rate of Interest Assistance Available (MRIAA)*—The maximum percentage level of subsidy which FmHA may grant at any given time, but which cannot ever exceed 4 percent. This percentage level will be periodically established by the Administrator, within statutory limits, and will be published in an Exhibit to FmHA Instruction 440.1, which is available in any FmHA office.

F. *Pro Forma Income and Expense Statement*—A projected income and expense statement listing, on a typical 12-month basis, all anticipated cash flows, including all farm and nonfarm income and all expenses (including debt service) to be incurred by the borrower during such period. Production levels and prices used in the preparation of a cash flow will be calculated in accordance with § 1980.113(d)(8) of this subpart.

IV. General Provisions

The typical term of scheduled loan/line of credit repayment will not be reduced solely for the purpose of maximizing eligibility for Interest Assistance.

A. To be eligible for Interest Assistance, a loan/line of credit must be scheduled over the maximum terms typically used by lenders for similar type loans. At a minimum, loans will be scheduled for repayment over the terms listed below or the life of the security, whichever is less, as explained below:

1. FO loans and SW loans secured by real estate—20 years from the effective date of the proposed Interest Assistance Agreement (except that for existing guaranteed loans the term will not exceed 40 years from the date of the original note covered by the guarantee).

2. OL loans/lines of credit for the purpose of providing annual operating and living expenses will be scheduled for repayment when the income is scheduled to be received from the sale of the crops, livestock, and livestock products which will serve as security for the loan. In no case will the repayment term exceed 7 years.

3. OL loans for purposes other than annual operating and living expenses (i.e., equipment, livestock, refinancing of existing chattel or carryover debt, real estate

development) and SW loans secured by chattel property—7 years from the effective date of the proposed Interest Assistance Agreement.

B. The lender must document that a positive cash flow projection is not possible without reducing the interest rate on the borrower's loan(s)/line(s) of credit. The documentation must show that a positive cash flow projection is not possible with the debt restructured over the term of repayment cited above.

C. The lender must determine whether the borrower owns any significant assets which do not contribute directly to essential family living or farm operating expense. The lender must determine the market value of these assets. The lender will then prepare a new cash flow budget based on the assumption that value of these assets will be used for debt reduction. If a positive cash flow can then be achieved, the borrower is not eligible for Interest Assistance. All Interest Assistance calculations will be made based on the cash flow budget which assumes that the assets will be sold.

D. In order for a borrower's loan to be eligible for Interest Assistance, a realistic plan of operation must show that a positive cash flow as defined in paragraph III D of this exhibit can be expected during the initial 24-month Interest Assistance period. For those loans with terms less than 24 months, the operation must show a positive cash flow for the term of the loan/line of credit.

E. If significant changes in the borrower's cash flow budget are anticipated after the initial 24 months with either expenses, income or debt repayment, then a typical plan(s) must show that the loan is expected to have a positive cash flow during all years of the loan/line of credit.

F. If a positive cash flow cannot be achieved, the lender may ask other creditors to voluntarily adjust their debts as outlined in subpart A of part 1903 of this chapter. If other creditors adjust their debts and a positive cash flow can be achieved with Interest Assistance, then Interest Assistance may be approved.

G. If a positive cash flow cannot be achieved, even with other creditors voluntarily adjusting their debts and with the Interest Assistance, the Interest Assistance request will not be approved.

H. The term of the Interest Assistance Agreement entered into under this exhibit shall not exceed the outstanding term of the loan/line of credit, as limited in paragraph IV A of this exhibit or 10 years, whichever is less.

I. The lender may charge a fixed or variable interest rate during the term of the Interest Assistance Agreement. The type of rate must be the same as the type of rate in the underlying note or line of credit agreement. The interest rate that the lender will charge will be clearly indicated in the Request for Interest Assistance. If a variable rate will be charged, the base rate, basis points and adjustment interval not only will be clearly set forth in the Request for Interest Assistance but also will comply with § 1980.175(e) of this subpart. If the lender uses a variable rate, the rate may be changed only once each year. During the term of the Interest Assistance Agreement, variable interest rates may not be increased by more than a total of 3 percent above the effective note rate of interest at the time this agreement is entered into. This cap on interest increases will be clearly spelled out in the note/line of credit agreement or in an allonge attached to the note/line of credit agreement or other legally effective amendment of the interest rate; however, no new note or line of credit agreement may be issued. The date of interest rate adjustment shall coincide with the annual payment date on loans/lines of credit with annual payments. On other loans/lines of credit, the annual review date will be clearly set out in the note/line of credit agreement.

V. Requests for Interest Assistance

A. Applications for guaranteed loan(s)/line(s) of credit shall be processed in accordance with § 1980.113 of this subpart and with this exhibit.

B. To apply for Interest Assistance in conjunction with a request for guarantee, the lender will complete Attachment 1 to this exhibit, "Request for Interest Assistance." Additionally, such applications must include a copy of Attachment 2 to this exhibit, "Interest Assistance Worksheet/Needs Test," completed by the lender. A proposed debt repayment schedule which shows principal and interest payments for the proposed loan, in each year of the loan, will also be submitted with the application.

C. To request Interest Assistance on an existing guaranteed loan, the lender shall submit to FmHA the following:

1. Attachment 1 to this exhibit, "Request for Interest Assistance."

2. Attachment 2 to this exhibit, "Interest Assistance Worksheet/Needs Test."

3. Proposed debt repayment schedule which shows scheduled principal and interest payments for the subject loan, in each of the remaining years of the loan.

4. Cash flow budgets, pro forma income and expense statements, and supporting justification to document that the request meets the requirements outlined in paragraph IV of this exhibit.

5. Verification of off-farm employment.

6. Form FmHA 440–32, "Request for Statement of Debts and Collateral," or similar documentation provided by other creditors.

7. Documentation of the borrower's and lender's compliance with the requirements of Exhibit M to subpart G of part 1940 of this chapter, if the affected loan/line of credit is not already subjected to this provision.

E. Requests for Interest Assistance on Contracts of Guarantee (Lines of Credit) or Loan Note Guarantees made for annual operating purposes must be accompanied by a projected monthly cash flow budget.

F. Within 3 working days of the receipt of any Loan Guarantee Request which does not include a Request for Interest Assistance, Attachment 3 to this exhibit will be mailed to the lender and the applicant by FmHA.

VI. FmHA Evaluation of Applications

Applications will be evaluated in accordance with § 1980.114 of this subpart. Additionally, the authorized approval official will determine whether or not all applicable provisions of this exhibit have been met. The approval official will check that:

A. Each item input on Attachment 2, "Interest Assistance Worksheet/Needs Test," is realistic for the area and type of operation and consistent with information provided in the request for guarantee and supporting documentation.

B. All mathematical computations are accurate.

C. The "Needs Test" was properly applied.

D. The loan/line of credit and applicant/borrower are eligible to receive interest assistance.

E. Nonessential assets were identified and that the computations were based on the assumption that these assets will be sold and the proceeds utilized to reduce debt.

Using Attachment 2 (including any necessary corrections), the approval official will determine the level of subsidy to be approved.

VII. Denial or Decrease of Interest Assistance Requested

If applicant is found ineligible for the loan guarantee or the guarantee cannot be approved for other reasons, the approval official will notify the lender and applicant in accordance with § 1980.114 or § 1980.115 of this subpart, respectively.

If the request for guarantee can be approved or has previously been approved and the request for interest assistance is denied or approved at a level less than that requested, the lender will be notified in accordance with paragraph XII of this exhibit.

VIII. Approval of Interest Assistance

If the approval official determines that Interest Assistance can be approved in accordance with paragraph IV of this exhibit, the approval official will:

A. Prepare Form FmHA 1940–3, "Request for Obligation of Funds—Guaranteed Loans." This form will be used to obligate interest assistance and loan funds for new loans and Interest Assistance funds only for those existing loans which are presently guaranteed without Interest Assistance.

B. Execute Form FmHA 1940–3 and distribute copies in accordance with the Forms Manual Insert (FMI).

C. Verify that the obligation of funds has been completed on Automated Discrepancy Processing System. A hard copy of this verification will be made and placed in the County Office case file.

D. For requests which include requesting funds in order to issue a guarantee on the loan/line of credit, prepare Form FmHA 449–14, "Conditional Commitment for Guarantee," or Form FmHA 1980–15, "Conditional Commitment for Contract of Guarantee (Line of Credit)." In no case will Form FmHA 449–14 or 1980–15 be executed prior to verification of the obligation of both loan/line of credit and Interest Assistance funds.

E. The approval official will complete the following statement and insert it on the conditional commitment:

"The subject guranteed loan has been approved for participation in the Interest Assistance program. Interest Assistance

during the first annual operating plan period will be _____ percent per annum of average outstanding principal. The Maximum Rate of Interest Assistance Available (MRIAA) under this commitment is _____ percent per annum of average outstanding principal balance. Interest Assistance is available under this commitment for a period not to exceed _____ years. Availability of Interest Assistance is subject to the loan being closed in accordance with the conditions of this commitment and with FmHA regulations. Interest Assistance availability is also subject to the execution of Form FmHA 1980–64, "Interest Assistance Agreement," and compliance with the conditions of that agreement. Conditions include the requirement that the rate of Interest Assistance be adjusted annually based on an analysis of the borrower's need for Interest Assistance, which the lender is required to perform and obtain FmHA concurrence with."

F. For requests for Interest Assistance on existing guaranteed loans, the approval official will notify the lender, in writing, that the request has been approved. The letter will include the statement in paragraph VIII E and any special conditions.

IX. Interest Assistance Closing

A. The lender will prepare, and deliver to FmHA, a Form FmHA 1980–19, "Guaranteed Loan Closing Report," for each initial and existing guaranteed loan/line of credit which has been granted Interest Assistance under this exhibit.

B. The guarantee will be closed in accordance with § 1980.61 and § 1980.118 of this subpart.

1. If FmHA finds that all requirements have been met, the lender and FmHA will execute Form FmHA 1980–64, "Interest Assistance Agreement." The borrower will acknowledge the agreement with its signature.

2. An original Form FmHA 1980–64 will be prepared for each note or line of credit agreement executed. All originals of Form FmHA 1980–64 will be provided to the lender and attached to the note(s) with the original Loan Note Guarantee or Contract of Guarantee.

X. Annual Interest Assistance Claims and Payments

The Interest Assistance claim will be prepared by the lender using Form FmHA 1980–24, "Request for Interest Assistance/Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender."

A. The first claim will be submitted to FmHA within 60 days after date of the initial annual payment/review date which is stated on this agreement. The claim will cover the entire period between the effective date of the agreement and the annual review/payment date.

B. Subsequent claims will cover the period between annual payment/review dates and will be prepared by the lender and submitted within 60 days following the annual payment review date.

C. Upon full payment of the note or line of credit, the lender will immediately prepare Form FmHA 1980–24 and submit it to the FmHA servicing office.

D. Interest Assistance payments shall cease upon the assumption/transfer of the loan if the transferee was not liable for the debt on the effective date of the Interest Assistance Agreement. The lender shall complete Form FmHA 1980–24 to request payment through the date of the transfer or assumption.

E. All claims for Interest Assistance other than final claims must be accompanied by an analysis of the applicant's continued need for assistance, during the period following the one for which the claim is made, as outlined in paragraph XI of this exhibit.

F. All claims will be submitted to the FmHA servicing office with documentation to support the assistance claim. The documentation will include:

1. A detailed statement of activity including all disbursements and payments applied to the loan/line of credit account.

2. Detailed calculations of interest charged, actual daily principal balances during the claim period and average principal balance for the claim period.

G. The authorized FmHA loan servicing official will review the information on Form FmHA 1980–24 and the supporting documentation. If the request is correct, the loan servicing official will approve and process the request. If the information on Form FmHA 1980–24 and the supporting documentation is not complete and/or correct, the loan servicing official will notify the lender in writing of the actions needed to correct the request. The notification letter will be in accordance with paragraph XII of this exhibit.

H. If the lender of the loan/line of credit is changed through a substitution of lender, a claim for the first lender's Interest Assistance, through the effective date of the substitution, will be submitted by the first lender and processed at the time the substitution takes place.

I. Interest Assistance claims shall be submitted concurrently with the submission of final loss claims and any estimated loss claims which cause interest to cease to accrue.

XI. Annual Request for Continuation/Adjustment of Interest Assistance

A. For all Interest Assistance Agreements that exceed one year, the lender will perform an annual analysis of the applicant's farming operation and need for continued Interest Assistance. This analysis will include the following:

1. A summary of the operation's actual financial performance in the previous year, including a detailed income and expense statement.

2. A narrative description of the causes of any major differences between the previous year's cash flow budget and actual performance.

3. A current balance sheet.

4. A copy of attachment 2 to this exhibit which has been completed based on the planned year's cash flow budget.

5. A cash flow budget for the year being planned. A monthly cash flow budget is required for all lines of credit and operating loans made for annual operating purposes. All other loans may include either annual or monthly cash flow budget.

The documentation listed above will be provided to FmHA concurrently with the lender's submission of Form FmHA 1980–24. Parts I and II of Form FmHA 1980–24 must be completed by the lender. This information will be provided to FmHA within 60 days after the annual payment/review date specified on the Interest Assistance Agreement.

B. The request for continuation/adjustment of Interest Assistance will be checked and evaluated by the authorized FmHA approval official in accordance with paragraph VI of this exhibit.

1. If the approval official's evaluation substantiates the requested level of Interest Assistance and it is equal to or less than the MRIAA stated on the Interest Assistance Agreement, the approval official will approve the request.

2. If the evaluation indicates that the borrower needs a higher level of Interest Assistance than the MRIAA provided for in the original Interest Assistance Agreement, and the current MRIAA is less than or equal to the MRIAA provided for in the original Interest Assistance Agreement, then the FmHA approval official will deny the continuation of Interest Assistance. Interest Assistance will be reduced to zero during that annual review period. The lender will be notified in accordance with paragraph XII of this exhibit.

3. If the evaluation indicates that the borrower needs a higher level of Interest Assistance than the MRIAA provided for in the original Interest Assistance Agreement, and the current MRIAA is higher than the MRIAA provided for in the original Interest Assistance Agreement, and the need does not exceed the current MRIAA, the FmHA approval official shall request additional subsidy funds using Form FmHA 1940–3.

a. If funds are available, the approval official will approve Interest Assistance at the level requested for the planned year only. For subsequent years the higher level of Interest Assistance will be subject to the availability of funds and the borrower's continued need.

b. If additional funds are not available, the request for Interest Assistance will be denied and the rate of Interest Assistance will be reduced to zero for that period. The lender will be notified in accordance with paragraph XII of this exhibit.

4. If the amount of Interest Assistance approved is less than that requested, the lender will be notified in accordance with paragraph XII of this exhibit.

5. The approval official will complete the appropriate portion of FmHA Form 1980–24 to reflect the amount of Interest Assistance which has been approved for the year. This should be completed even if this year's assistance level will be zero percent so that adjustments in the obligation records can be made. The original will be returned to the lender for attachment to the original Interest Assistance Agreement.

XII. Notification of Adverse Action

The lender will be notified in writing of all FmHA decisions in which request for Interest Assistance, a request for continuation/

adjustment of Interest Assistance or a lender's claim for Interest Assistance are denied or approved a level less than requested.

The notification letter will provide specific reasons for the decision and appeals will be handled in accordance with § 1980.80 of this subpart. In addition, if the reason for the reduction/denial is that the rate of Interest Assistance requested exceeds the maximum amount allowed under this exhibit, then exhibit C of subpart B of part 1900 of this chapter will be sent to the lender.

XIII. Servicing of Loans/Lines of Credit Covered by an Interest Assistance Agreement

A. Loans/lines of credit covered by Interest Assistance Agreements cannot be consolidated.

B. Transfers will be processed in accordance with § 1980.123 of this subpart. The loan/line of credit will be transferred with the Interest Assistance Agreement only in cases where the transferee was liable for the debt at the time the Interest Assistance was granted. UNDER NO OTHER CIRCUMSTANCES WILL THE INTEREST ASSISTANCE BE TRANSFERRED. If Interest Assistance is necessary for the transferee to achieve a positive cash flow, the lender may request a new Interest Assistance Agreement which may be approved if Interest Assistance funds are available and the applicant is eligible. The request for the obligation of these funds will be processed using Form FmHA 1940–3. If Interest Assistance is necessary for a positive cash flow and funds are not available, the request for assumption of the FmHA guaranteed debt will be denied.

C. When consideration is given to using a debt writedown to service a delinquent account, the subsidy level will be recalculated prior to any writedown. If a feasible plan can be obtained using a level of Interest Assistance less than or equal to the original MRIAA for this loan, then the Interest Assistance level will be adjusted and no writedown will be approved. If a feasible plan cannot be achieved using maximum Interest Assistance, all further calculations for determining debt writedown eligibility and amounts to be written down will be based on the borrower receiving the maximum Interest Assistance available.

D. In the event of reamortization, rescheduling or deferral of loans with Interest Assistance, Interest Assistance will remain available for that loan under the terms of the existing Interest Assistance Agreement. If additional years of Interest Assistance are required, the funds will be requested via the obligation process using Form FmHA 1940–3. If the additional Interest Assistance is needed in order to produce a feasible plan throughout the life of the rescheduled/reamortized loan and funds are not available for the additional Interest Assistance, then the rescheduling/reamortization will not be approved by FmHA. In no case, will the subsidy be extended more than 10 years from the initial effective date of the original Interest Assistance Agreement. Amendments to the original Interest Assistance Agreement will be made as required.

E. In a reorganization bankruptcy (chapter 11, 12 or 13) the court may order a temporary or permanent reduction in the interest rate that a lender may charge on a loan/line of credit. In cases where the interest on a loan/line of credit covered by an Interest Assistance Agreement is reduced by court order, the Interest Assistance Agreement will be terminated effective on the date of the court ordered interest reduction. The lender will file a Form FmHA 1980–24 to collect interest assistance due through the effective date of the court ordered interest reduction. Interest loss payments will be processed in accordance with paragraph XVI of Form FmHA 449–35, "Lender's Agreement," or Form FmHA 1980–38, "Lender's Agreement (Line of Credit)." Guaranteed loans which have had their interest reduced by bankruptcy court order are not eligible to subsequently receive Interest Assistance under this exhibit.

F. For Loan Note Guarantees held by holders, FmHA purchase of the guaranteed portion of a loan will stop Interest Assistance payments on that portion. Interest Assistance payments will cease upon termination of the Loan Note Guarantee or Contract of Guarantee, upon reaching the expiration date set forth in this agreement or upon cancellation by the Government. When Interest Assistance payments will be stopped because of the repurchase of a portion of the note by FmHA or termination of the guarantee, the lender shall immediately submit a Form FmHA 1980–24.

G. As required in Form FmHA 449–35, or Form FmHA 1980–38, a lender will notify FmHA when a borrower who is not receiving maximum Interest Assistance, is thirty (30) days past due on a payment and is unable to bring the account current within 30 days. The lender will request that FmHA make a determination as to the borrower's eligibility for Interest Assistance. The lender will submit a plan of operation for the farm projecting the repayment ability of the borrower with and without Interest Assistance. FmHA will make the eligibility determination and will notify the lender in writing within 10 calendar days of receipt of the request. Upon receipt of FmHA's determination of the borrower's eligibility for Interest Assistance the lender may submit a request for Interest Assistance. If the lender declines to utilize Interest Assistance, the lender will notify FmHA in writing within 30 days.

XIV. Cancellation of Interest Assistance Agreement

Form FmHA 1980–64 is incontestable except for fraud or misrepresentation, of which the lender and borrower have actual knowledge at the time that the Interest Assistance Agreement is executed, or which the lender/borrower participates in or condones.

XV. Mid-Year Adjustment of Assistance Level

After the initial or annual request for interest assistance is processed, no adjustments in the level of subsidy can be made until the next annual payment/review date.

XVI. Excessive Interest Assistance

Upon written notice to the lender, borrower and any holder(s), the Government may amend or cancel the Interest Assistance Agreement and collect from the lender any amount of Interest Assistance granted which resulted from incomplete or inaccurate information (of which the lender was aware), an error in computation, or any other reason which resulted in payment that the lender was not entitled to receive. The FmHA servicing office must notify the Finance Office of this condition using Form FmHA 1980–24 and provide the necessary documentation to establish an account receivable for the overpayment.

XVII. List of Eligible Lenders

The County Supervisor will maintain a current list of lenders in the area that participate in the guaranteed farm loan program and other lenders who express a desire to participate in the guaranteed farm program. This list will be made available to farmers upon request.

XVIII. Relationship of Interest Assistance Program With Interest Rate Buydown Program

A. The Interest Assistance Program replaces the Interest Rate Buydown (IRBD) Program which was previously described in this exhibit, effective February 28, 1991.

B. A guaranteed loan will not be covered by both an Interest Rate Buydown Agreement and an Interest Assistance Agreement simultaneously.

C. Loans covered by IRBD Agreements will continue to be serviced, and requests for payments will be made and paid, in accordance with the terms of the "Interest Rate Buydown Agreement," Form FmHA 1980–58.

D. Existing IRBD Agreements will expire on the date scheduled on Form FmHA 1980–58. Extensions of these agreements are prohibited.

E. If a request for Interest Assistance is made on an existing guaranteed loan which has previously been covered by an IRBD Agreement, the time that Form FmHA 1980–58 was in effect (rounded to the next full year) will be deducted from the 10 years to determine the maximum term that Interest Assistance can be granted. Example: If the borrower has a 20-year guaranteed FO loan with 15 years remaining on the term and the borrower had previously received 3 years of IRBD, the maximum term of Interest Assistance is 7 years.

F. A lender may cancel its IRBD Agreement by notifying FmHA. Such notification shall be made by executing Form FmHA 1980–24 and indicating that they wish the IRBD Agreement terminated. When the lender entered into the IRBD Agreement, the lender modified the borrower's interest rate to a final rate for the term of the original IRBD Agreement. Therefore, even if a lender cancels the IRBD Agreement the effective rate to the borrower will continue as indicated in the allonge or line of credit agreement. If the lender subsequently requests Interest Assistance on this loan, the existing note rate used in calculating the need

for Interest Assistance will be the rate which is specified in the IRBD allonge. This rate will also be used in calculating any loss claims payment which may be made on these loans/lines of credit.

G. Since 1987, IRBD program lenders have been required to agree that they will consider the IRBD program prior to the liquidation of guaranteed loans. This requirement has been included in § 1980.115 of this subpart and in various lenders agreements and conditional commitments. In all documents references to the IRBD program are now defined as meaning the Interest Assistance Program.

Attachment 1—Request for Interest Assistance

Borrower/Applicant Name _____.
Borrower/Applicant Social Security/Tax ID number _____.

I. Type of Request

A. Request for Interest Assistance in conjunction with a request for guarantee.

1. Loan amount/line of credit ceiling _____.

2. The interest rate charged the lender's average farm customer, _____%. (Specify fixed or variable. If variable rates are used, the average farm customer's variable rate for the past 90 days shall be inserted.)

3. The proposed note interest rate to the subject borrower prior to Interest Assistance is _____% (may not exceed A.2). If variable, describe conditions for adjustment (i.e., base rate, basis points, and adjustment interval).

_____

B. Request for Interest Assistance on an existing guaranteed loan. Original Loan/Line of Credit closing date _____. Current principal balance _____. Unpaid interest _____. Has the Loan/Line of Credit been fully advanced _____. Final due date of loan _____. Current note rate (before Interest Assistance) _____. If variable, describe conditions for adjustment (a base rate, basis points, and adjustment interval)

_____

II. Level of Interest Assistance requested for initial year, (cannot exceed MRIAA and must be in increments of .25%) _____%.

III. Has this loan been previously covered by an Interest Rate Buydown (IRBD) or Interest Assistance Agreement? Yes/No _____. If yes, how long was Agreement effective (rounded up to next full year) _____ years. Requested term of the Interest Assistance agreement (cannot exceed term of the loan or 10 years including previous IRBD time, whichever is less) _____ years.

IV. In connection with the subject request the lender certifies that:

A. The amount of interest resulting from the percentage of interest which FmHA agrees to pay will be permanently cancelled as it becomes due and that no attempt will be made to collect that portion of the debt from the borrower.

B. The lender's reduction in interest charged to the borrower will result in a reduced payment schedule for the borrower and a projected positive cash flow (as defined in paragraph III D of this exhibit D to 7 CFR part 1980, subpart B) throughout the term of the Interest Assistance Agreement.

C. The borrower's cash flow projections and/or typical plan of operation have been prepared in accordance with 7 CFR part 1980, subpart B, § 1980.113(d)(8), and are attached to this document. For lines of credit and operating loans for annual operating purposes, a monthly cash flow budget (as defined in paragraph III B of exhibit D to 7 CFR part 1980, subpart B) has been prepared and is attached.

D. A copy of Attachment 2 to this exhibit, "Interest Assistance Worksheet/Needs Test," has been completed and attached.

Warning: Section 1001 of title 18, United States Code provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up . . . a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both."

_____
(Name of Lender)
By _____

_____
Title

_____

Lender's IRS ID No.
Date _____.

Attachment 2—Interest Assistance Worksheet/Needs Test

Effective Dates of Review Period _____ to _____ (cannot exceed 1 year except as noted in Needs Test)
Applicant/Borrower Name _____
Social Security/Taxpayer ID Number _____

Type of Request:

1. New Loan/Line of Credit Guarantee Request _____

2. New Interest Assistance Request on an Existing Guaranteed Loan/Line of Credit _____

3. Annual Review/Renewal Request Under an Existing Interest Assistance Agreement _____

Does the applicant/borrower own significant assets which do not contribute directly to essential family living and operating expenses? _____ yes _____ no. If yes, the following information on Balance Available and Debts To Be Paid will be based on the assumption that these assets will be sold and the proceeds used to reduce the debt.

A. Balance available for debt repayment (from Request for Guarantee or similar plan using the same calculation methods) _____

B. Maximum debt that the borrower can pay and still have a "positive cash flow" = (A/1.10) _____

C. Total debt repayment not including the loan/line of credit being considered for Interest Assistance. (Including Principal and Interest Payments, Income Taxes, Social Security Tax and open accounts not included in operating expenses.) (From Request for Guarantee or cash flow budget/debt repayment schedule _____

D. Amount of Annual Principal Payment on loans being considered for Interest Assistance (obtain from Loan/Line of Credit Payment Schedule provided by the lender) _____

E. Amount available for interest payments on loan/line of credit being considered for Interest Assistance = B − (C + D) _____

F. Projected Average Principal Balance. (Computed in accordance with paragraph III to exhibit D of 7 CFR part 1980, subpart B.) _____

G. Effective Rate of Interest that the borrower can pay and have a positive cash flow = (E/F) _____

H. Note Rate on Loan Without Interest Assistance (not to exceed lender's average farm customer interest rate for initial notes) _____

I. Rate of Interest Assistance borrower needs to achieve a positive cash flow (H–G) (rounded up to the next ¼ percent) = _____

J. Maximum Rate of Interest Assistance Available (MRIAA) currently available under the program (check with FmHA Instruction 440.1) = _____

K. Original MRIAA percentage rate which was obligated and appears on Interest Assistance Agreement (answer N/A for new Interest Assistance requests) _____

L. Percent of Interest Assistance requested based on Needs Test and eligibilty requirements of exhibit D to 7 CFR part 1980, subpart B _____

_____
Preparer's Signature

_____
Title

_____
Date

Note: The Needs Tests listed below are offered as a guide for calculating the needed level of the Interest Assistance. Requests for new or continuing Interest Assistance must meet all requirements of this exhibit and subpart.

Needs Test—Interest Assistance With a New Request for Guarantee

—If the rate of Interest Assistance needed by the borrower is less than or equal to zero (I≤0%), then the guaranteed loan can be approved without Interest Assistance. Interest Assistance will be denied.

—If the rate of Interest Assistance needed by the borrower is greater than zero and less than or equal to the Maximum Rate of Interest Assistance Available (0% < I ≤ J), then the loan can be approved with the needed Interest Assistance (I).

—If the rate of subsidy needed by the borrower is greater than the MRIAA (I < J), then the loan guarantee request will be rejected for lack of repayment. (Lender/applicant may attempt to get other creditors to adjust their debts and redo the cash flow budget and Interest Assistance calculations based on the debt repayment subsidy.)

Needs Test—Interest Assistance Request on an Existing Guaranteed Loan

—If the rate of Interest Assistance needed by the borrower is less than or equal to zero (I<0%), then the Interest Assistance request will be denied.
—If the rate of Interest Assistance needed is greater than zero and less than or equal to the MRIAA rate (0%<I<J), then the Interest Assistance will be approved at the needed rate (I).
—If the rate of Interest Assistance needed during the first 12 months is greater than the MRIAA (I<J), then the reviewer will recalculate the worksheet using the information from the combined 24-month budget(s).>≦
—If the rate of Interest Assistance recorded during the first 24 months is less than or equal to the MRIAA rate, then Interest Assistance will be granted for the first 12 months at the MRIAA rate.
—If the rate of Interest Assistance needed during the first 24 months still exceeds the MRIAA, then the Interest Assistance request will be rejected (the lender/applicant may attempt to get other creditors to adjust their debts and then redo the cash flow budget and Interest Assistance calculations based on the new debt repayment schedule).

Needs Test—for Annual Continuation/Adjustment Request for a Loan Covered by an Interest Assistance Agreement

—If the rate of Interest Assistance needed for the borrower is less than or equal to zero (I<0%) Interest Assistance will be reduced to zero for this review period.
—If the rate of Interest Assistance needed by the borrower is greater than zero and less than or equal to the MRIAA on the original Interest Assistance Agreement (0%<I<K), then Interest Assistance will be approved at the needs rate (I).
—If the rate of Interest Assistance needed is greater than the original MRIAA percentage rate which was obligated (I<K) and the current MRIAA is less than or equal to the original MRIAA (J<K), then the Interest Assistance will be reduced to zero for the plan period.
—If the rate of Interest Assistance needed is greater than the original MRIAA (I<K) and the current MRIAA is greater than the original MRIAA (J<K), and the rate of Interest Assistance needed is less than or equal to the current MRIAA (I<J) and additional Interest Assistance funds are available and have been obligated, then Interest Assistance can be approved at the current MRIAA level (J).

Attachment 3—Interest Assistance Information Letter

United States Department of Agriculture

Farmers Home Administration

(Location)

Dear _____:

The Farmers Home Administration (FmHA) has authority to make payments to lenders to reduce eligible borrower interest rates on guaranteed farm loans. The Interest Assistance Program provides lenders with a tool to enable them to provide credit to family farm operators who are unable to project a positive cash flow on all income and expenses, including debt service, without a reduction in the interest rate.

Lenders that participate in this program enter into an agreement with FmHA to reduce the interest rate paid by the borrower on a loan guaranteed by FmHA. In return, FmHA will make annual payments to the lender in the amount of the reduction in interest. Payments made to a lender under this authority are currently limited to ____ percent of the outstanding principal per annum. This limit is subject to periodic changes.

Borrowers with guaranteed Farm Operating (OL), Farm Ownership (FO), and Soil and Water (SW) loans may be included in this program.

If you would like additional information regarding the Interest Assistance Program for guaranteed loans and how to apply, you should contact this office.

I will be glad to discuss this program in detail with you.

Sincerely,

County Supervisor

24. In exhibit E to subpart B, paragraph I. is amended in the third sentence by changing the date "January 6, 1991," to read "January 6, 1992."

25. In exhibit E to subpart B, paragraph V.A. is amended by changing "Form FmHA 1940–1, 'Request for Obligation of Funds,' " to "Form FmHA 1940–3, 'Request for Obligation of Funds—Guaranteed Loans.' "

26. In exhibit E to subpart B, paragraph VI.B.3. is amended in the fourth sentence by changing the title of Form FmHA 1980–24 from "Request Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender," to "Request Interest Assistance/Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender."

27. In exhibit E to subpart B, paragraph XI. is amended in the second sentence by changing the title of Form FmHA 1980–24 from "Request Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender," to "Request Interest Assistance/Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender."

Subpart D—Rural Housing Program Loans

§ 1980.340 [Amended]

28. Section 1980.340(c)(3) is amended in the first sentence by changing "Form FmHA 1940–1, 'Request for Obligation of Funds,' " to "Form FmHA 1940–3, 'Request for Obligation of Funds—Guaranteed Loans.' "

§ 1980.354 [Amended]

29. Section 1980.354(c)(1) is amended in the first sentence by changing "Form FmHA 1940–1, 'Request for Obligation of Funds,' " to "Form FmHA 1940–3, 'Request for Obligation of Funds—Guaranteed Loans.' "

Subpart E—Business and Industrial Loan Program

§ 1980.424 [Amended]

30. Paragraph A.5. of the "Administrative" material at the end of § 1980.424 is amended by changing "Form FmHA 1940–1, 'Request for Obligation of Funds,' " to "Form FmHA 1940–3, 'Request for Obligation of Funds—Guaranteed Loans.' "

31. In § 1980.451 "Administrative" material, paragraph B.7. is amended by revising the entry beginning with Form FmHA 1940–1 to read as follows:

§ 1980.451 Filing and processing applications.

* * * * *

B. * * *

7. * * *

FmHA 1940–3; Request for Obligation of Funds—Guaranteed Loans; Filing Position 2

* * * * *

§ 1980.452 [Amended]

32. Paragraph D.6.b. of the "Administrative" material at the end of § 1980.452 is amended by changing "section 41" to read "section 35," and by changing "Form FmHA 1940–1" to read "Form FmHA 1940–3."

Subpart G—Nonprofit National Corporations Loan and Grant Program

§ 1980.628 [Amended]

33. Section 1980.628(e) is amended in the first sentence by changing "Form FmHA 1940–1, 'Request for Obligation of Funds,' " to "Form FmHA 1940–3, 'Request for Obligation of Funds—Guaranteed Loans.' "

§§ 1980.424, 1980.452, 1980.646, 1980.648, 1980.853 [Amended]

34. In part 1980, change the reference "Form FmHA 1940–1" to "Form FmHA 1940–3" in the following places:

a. Exhibit E V.B. to subpart B.
b. Section 1980.424 Administrative B. 4. of subpart E.
c. Section 1980.452 Administrative D. 6. of subpart E (6 places).
d. Section 1980.452 Administrative D. 6. a. of subpart E.
e. Section 1980.646 (b)(1) of subpart G.
f. Section 1980.646 (c) of subpart G.
g. Section 1980.648 (b)(2) of subpart G (2 places).
h. Introductory paragraph of § 1980.853 of subpart I (6 places).
i. Section 1980.853 (a) of subpart I.
j. Section 1980.853 (b) of subpart I.

Dated: January 29, 1991.

Jonathan I. Kislak,

Acting Under Secretary, Small Community and Rural Development, U.S. Department of Agriculture.

[FR Doc. 91–4594 Filed 2–27–91; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 26472; Amdt. No. 1446]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types of effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard Instrument, Incorporation by reference.

Issued in Washington, DC.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:—

PART 97—[AMENDED]

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

Authority: 49 U.S.C. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective April 4, 1991

Gadsden, AL—Gadsden Muni, VOR RWY 6, Amdt. 12
Kotzebue, AK—Ralph Wien Memorial, VOR RWY 8, Amdt. 3
Kotzebue, AK—Ralph Wien Memorial, VOR/DME RWY 8, Amdt. 2
Kotzebue, AK—Ralph Wien Memorial, VOR RWY 26, Amdt. 2
Kotzebue, AK—Ralph Wien Memorial, VOR/DME RWY 26, Amdt. 1
Kotzebue, AK—Ralph Wien Memorial, NDB-A, Amdt. 12, CANCELLED
Kotzebue, AK—Ralph Wien Memorial, NDB-A, Orig.
Kotzebue, AK—Ralph Wien Memorial, ILS/DME RWY 8, Amdt. 5
Camarillo, CA—Camarillo, NDB/DME-A, Orig.
Winter Haven, FL—Winter Havens Gilbert, VOR/DME-A, Amdt. 5
Lawrenceville, GA—Gwinnett County-Briscoe Field, VOR/DME RWY 6, Orig.
Lawrenceville, GA—Gwinnett County-Briscoe Field, NDB RWY 24, Orig.
Lawrenceville, GA—Gwinnett County-Briscoe Field, VOR/DME RWY 7, Orig. CANCELLED
Lawrenceville, GA—Gwinnett County-Briscoe Field, LOC RWY 25, Amdt. 2 CANCELLED
Lawrenceville, GA—Gwinnett County-Briscoe Field, NDB RWY 25, Amdt. 3 CANCELLED
Macon, GA—Herbert Smart Downtown, VOR-A, Amdt. 4
Macon, GA—Herbert Smart Downtown, VOR/DME-B, Amdt. 2
Macon, GA—Herbert Smart Downtown, LOC RWY 10, Amdt. 4
Macon, GA—Herbert Smart Downtown, RADAR-1, Amdt. 2
Vidalia, GA—Vidalia Muni, LOC RWY 24, Amdt. 1
Vidalia, GA—Vidalia Muni, NDB RWY 24, Amdt. 1
Greenville, KY—Muhlenberg County, VOR/DME-A, Amdt. 4
Hopkinsville, KY—Hopkinsville-Christian County, LOC RWY 26, Amdt. 1
Hopkinsville, KY—Hopkinsville-Christian County, NDB RWY 26, Amdt. 4
Madisonville, KY—Madisonville Muni, VOR RWY 23, Amdt. 11
Madisonville, KY—Madisonville Muni, VOR/DME RNAV RWY 23, Amdt. 2
Owensboro, KY—Owensboro-Daviess County Arpt, VOR RWY 17, Amdt. 7
Owensboro, KY—Owensboro-Daviess County, VOR RWY 35, Amdt. 15
Owensboro, KY—Owensboro-Daviess County, NDB RWY 35, Amdt. 7
Owensboro, KY—Owensboro-Daviess County, ILS RWY 35, Amdt. 9
Springfield, KY—Lebanon-Springfield, VOR/DME RWY 11, Amdt. 3
Springfield, KY—Lebanon-Springfield, NDB RWY 11, Orig.
Sturgis, KY—Sturgis Muni, NDB RWY 36, Amdt. 6
Caribou, ME—Caribou Muni, Radar-1, Amdt. 2, CANCELLED
Morris, MN—Morris Muni, VOR RWY 14, Orig.
Morris, MN—Morris Muni, VOR RWY 32, Amdt. 4
Elizabeth City, NC—Elizabeth City CG Air STA/Muni, VOR/DME RWY 10, Orig.
Elizabeth City, NC—Elizabeth City CG Air STA/Muni, VOR/DME RWY 19, Amdt. 10
Elizabeth City, NC—Elizabeth City CG Air STA/Muni, VOR/DME RWY 28, Orig.
Huron, SD—Huron Regional, VOR RWY 12, Amdt. 21
Huron, SD—Huron Regional, LOC/DME BC RWY 30, Amdt. 11
Huron, SD—Huron Regional, NDB RWY 12, Amdt. 20
Huron, SD—Huron Regional, ILS RWY 12, Amdt. 9
San Angelo, TX—Mathis Field, VOR RWY 21, Amdt. 14
San Angelo, TX—Mathis Field, VOR/DME RWY 21, Orig.
San Angelo, TX—Mathis Field, LOC BC RWY 21, Amdt. 12
San Angelo, TX—Mathis Field, NDB RWY 3, Amdt. 13
San Angelo, TX—Mathis Field, ILS RWY 3, Amdt. 19
San Angelo, TX—Mathis Field, RNAV RWY 18, Amdt. 3, CANCELLED
San Angelo, TX—Mathis Field, RNAV RWY 36, Amdt. 3, CANCELLED
Tooele, UT—Bolinder Field-Tooele Valley, NDB RWY 16, Orig.

. . . Effective March 7, 1991

Baltimore, MD—Baltimore-Washington Intl, ILS RWY 15L, Orig.
Baltimore, MD—Baltimore-Washington Intl, ILS/DME RWY 33R, Orig.
Kearney, NE—Kearney Muni, VOR RWY 13, Amdt. 1
Kearney, NE—Kearney Muni, VOR RWY 18, Amdt. 12
Kearney, NE—Kearney Muni, VOR RWY 36, Amdt. 9
Kearney, NE—Kearney Muni, LOC RWY 36, Amdt. 5
Kearney, NE—Kearney Muni, NDB RWY 36, Amdt. 4

. . . Effective February 7, 1991

Houston, TX—David Wayne Hooks Memorial, RNAV RWY 35L, Amdt. 3

[FR Doc. 91-4750 Filed 2-27-91; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 769, 770, 771, 772, 773, 774, 777, 786 and 799

[Docket No. 901182-0282]

Editorial Clarifications to the Export Administration Regulations

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Export Administration Regulations are being amended to correct an inaccuracy contained in an Interpretation of the antiboycott provisions, to reflect the current format of the Commodity Control List (CCL) in the general license provisions for mail shipments, to include software in General License GUS, to correct inaccuracies in the "Special Instructions for Completing License Applications for Consolidated Shipments of Gift Parcels" section, to add batch mixers to the "Commodities Excluded from Certain Special License Procedures" list, to update the license recordkeeping requirements to reflect current practices, to change the name of the Exporter Assistance Staff to Export Counseling Division, and to change the name of the Office of Munitions Control (U.S. Department of State) to Office of Defense Trade Controls.

EFFECTIVE DATE: This rule is effective February 28, 1991.

FOR FURTHER INFORMATION CONTACT: Sharon Gongwer, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: 202-377-2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves a collection o information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *e.*

seq.). This collection has been approved by the Office of Management and Budget under control number 0694–0005. This rule also eliminates the requirement that U.S. exporters record shipment data on the reverse side of the export license, but it does not relieve them of the obligation to keep shipment records in their files according to § 787.13 of the EAR. Therefore, the collection of information approved by the Office of Management and Budget under control number 0694–0014 pertaining to recordkeeping on the export license document is eliminated.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in the effective date, are inapplicable because the regulation involves a foreign and military affairs function of the United States. This rule does not impose a new control. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Accordingly, it is being issued in final form. However, comments from the public are always welcome. Comments should be submitted to Sharon Gongwer, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 769

Boycotts, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 770

Administrative practice and procedure, Exports.

15 CFR Parts 771, 772, 773, 774, 786, and 799

Exports, Reporting and recordkeeping requirements.

15 CFR Part 777

Administrative practice and procedure, Exports, Forest and forest products, Petroleum, Reporting and recordkeeping requirements.

Accordingly, parts 769, 770, 771, 772, 773, 774, 777, 786, and 799 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citations for 15 CFR parts 769, 770, 771, 772, 773, 774, 786 and 799 are revised to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986); Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

2. The authority citation for 15 CFR part 777 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 100–418 of August 23, 1988, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1965 (50 FR 28757, July 16, 1985); sec. 103, Pub. L. 94–163 of December 22, 1975 (42 U.S.C. 6212) as amended by Pub. L. 99–58 of July 2, 1985; sec. 101, Pub. L. 93–153 of November 16, 1973 (30 U.S.C. 185); sec. 28, Pub. L. 95–372 of September 18, 1978 (43 U.S.C. 1354); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976) as amended; secs. 201 and 201(11)(e), Pub. L. 94–258 of April 5, 1976 (10 U.S.C. 7420 and 7430(e)); sec. 125, Pub. L. 99–64 of July 12, 1985 (46 U.S.C. 466(c)); Presidential Findings of June 14, 1985 (50 FR 25189, June 18, 1985) and December 31, 1988 (54 FR 271, January 5, 1989); and sec. 305, Pub. L. 100–449 of September 28, 1988; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

PART 769—[AMENDED]

3. In Supplement No. 15 to part 769 (Interpretation), paragraph (c) is amended by revising the phrase "boycotted country" to read "boycotting country" in the first sentence of the second paragraph.

PART 770—[AMENDED]

§ 770.11 [Amended]

4. In § 770.11, paragraph (a)(2)(i)(B) is amended by revising the phrase "Exporter Assistance Staff" to read "Exporter Counseling Division" in the first sentence.

§ 770.12 [Amended]

5. Section 770.12 is amended by revising the phrase "Exporter Assistance Staff" to read "Exporter Counseling Division" in the first sentence.

PART 771—[AMENDED]

§ 771.2 [Amended]

6. In § 771.2, paragraph (b)(2)(ii) is amended by revising the phrase "in the column headed" to read "in the paragraph headed".

7. In § 771.13, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 771.13 General License GUS; shipments to personnel and agencies of the U.S. Government.

(a) * * *

(1) *Commodities and software for personal use.* Commodities and software in quantities sufficient only for the personal use of members of the U.S. Armed Forces or civilian personnel of the U.S. Government (including U.S. representatives to public international organizations), and their immediate families and servants in each case. Commodities for personal use include household effects, food, beverages, and other daily necessities.

(2) *Commodities and software for official use.* Any commodity or software consigned to and for the official use of any agency of the U.S. Government.

* * * * *

PART 772—[AMENDED]

§ 772.4 [Amended]

8. In § 772.4, paragraphs (i)(1), (i)(1)(i) [two references], (i)(1)(ii), (i)(2), and (i)(3) [two references] are amended by revising the phrase "Exporter Assistance Staff" to read "Exporter Counseling Division".

9. In § 772.8, paragraph (d)(2) is amended by revising the entries for Blocks 6 and 7 to read as follows:

§ 772.8 Special types of individual license applications.

* * * * *

(d) * * *

(2) *Special instructions for completing license applications for consolidated shipments of gift parcels.*

Block 6—Enter the word "various" instead of the name and address of a single ultimate consignee;

Block 7—Enter the word "none";

* * * * *

§ 772.11 [Amended]

10. In § 772.11, paragraph (g)(1)(ii) is amended by revising the phrase "Exporter Assistance Staff" to read "Exporter Counseling Division".

PART 773—[AMENDED]

11. Supplement No. 1 to part 773 is amended by revising entry "1118" to read "2118" and by adding entry 4118 immediately following the newly designated entry 2118 to read as follows:

Supplement No. 1 to Part 773—Commodities Excluded From Certain Special License Procedures

* * * * *

2118 * * *

4118 Batch mixers. (Entire entry.)

* * * * *

PART 774—[AMENDED]

§ 774.3 [Amended]

12. In § 774.3, paragraph (b)(4) is amended by revising the phrase "Exporter Assistance Staff" to read "Exporter Counseling Division".

PART 777—[AMENDED]

§ 777.1 [Amended]

13. In § 777.1, paragraph (c)(3) is amended by revising the phrase "Exporter Assistance Staff" to read "Exporter Counseling Division".

PART 786—[AMENDED]

14. Section 786.2 is amended by removing footnote 3 in paragraph (d)(1), by removing paragraphs (d)(1) and (d)(2), by redesignating paragraphs (d)(3) and (d)(4) as paragraphs (d)(1) and (d)(2), respectively, and revising them, and by removing the parenthetical at the end of the section to read as follows:

§ 786.2 Use of validated license. [2]

* * * * *

(d)* * *

(1) *Retention of licenses.* Licenses issued by the Office of Export Licensing shall be retained by the applicant, along with all applicable supporting documents and records of shipments in accordance with the provisions of § 787.13 of this subchapter. Revoked or suspended licenses shall be returned as provided in paragraph (d)(2) of this section.

(2) *Return of revoked or suspended licenses.* If the Office of Export Licensing revokes or suspends a license, the licensee shall return it immediately upon notification that the license has been revoked or suspended. The licensee shall return the revoked or suspended license to: Office of Export Licensing, P.O. Box 273, Washington, DC 20044. All applicable supporting documents and records of shipments shall be retained by the licensee as provided by §787.13 of this subchapter. If the licensee fails to return a license immediately upon notification that it has been revoked or suspended, the Office of Export Enforcement may impose sanctions provided for in § 787.1 of this subchapter.

[2] Provisions relating to the export clearance of technical data under a validated license are set forth in § 779.6 of this chapter.

§ 786.3 [Amended]

15. In § 786.3, paragraph (p)(1) is amended by redesignating footnote 4 as footnote 3 in the introductory text.

16. Section 786.3 is amended by removing paragraphs (r)(5), (r)(6), and (r)(7) and by redesignating paragraphs (r)(8), (r)(9), and (r)(10) as paragraphs (r)(5), (r)(6), and (r)(7), respectively.

§ 786.6 [Amended]

17. Section 786.6 is amended by redesignating footnote 5 as footnote 4 in paragraph (d)(1), and by redesignating footnote 6 as footnote 5 in paragraphs (d)(2)(i)(B) and (d)(3).

PART 799—[AMENDED]

18. In Supplement No. 1 to § 799.2 (Commodity Interpretations), Interpretation 12 (Scrap Arms, Ammunition, and Implements of War) paragraph (c) is amended by revising the phrase "Exporter Assistance Staff" to read "Exporter Counseling Division" and by revising the phrase "Office of Munitions Control" to read "Office of Defense Trade Controls".

Dated: February 21, 1991.

Michael P. Galvin,

Assistant Secretary for Export Administration.

[FR Doc. 91-4553 Filed 2-27-91; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revising the regulations to set forth the current organizational structure of the agency as well as the current addresses for Headquarters and field offices.

EFFECTIVE DATE: February 28, 1991.

FOR FURTHER INFORMATION CONTACT: Ellen Rawlings, Division of Management and Operations (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: The regulations are being amended in 21 CFR 5.100 and 5.115 to reflect the current organizational structure of the agency and provide current addresses for Headquarters and field offices.

The major changes in FDA's organizational structure in 1990 were the addition, in the Immediate Office of the Commissioner, of the Office of Biotechnology and the Office of Small Business, Scientific, and Trade Affairs. Also added were the AIDS Coordination Staff and the Ombudsman position. In addition, the following center offices renamed, added, or deleted divisions: Office of Generic Drugs and Office of Research Resources, Center for Drug Evaluation and Research; Office of Biologics Research, Center for Biologics Evaluation and Research; Office of New Animal Drug Evaluation, Center for Veterinary Medicine; and Office of Management, National Center for Toxicological Research.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 2271; 15 U.S.C. 638, 1261-1282, 3701-3711a; secs. 2-12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451-1461); 21 U.S.C. 41-50, 61-63, 141-149, 467f, 679(b), 801-886, 1031-1309; secs. 201-903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321-393); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 354-360F, 361, 362, 1701-1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b-263n, 264, 265, 300u-300u-5, 300aa-1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007-10008; E.O. 11490, 11921, and 12591.

2. Section 5.100 is revised to read as follows:

§ 5.100 Headquarters.

The central organization of the Food and Drug Administration consists of the following:

Office of the Commissioner [1]

Office of Regulatory Affairs.
Office of Management and Operations.
Office of Health Affairs.
Office of Science.
Office of Planning and Evaluation.
Office of Legislative Affairs.
Office of Public Affairs.
Office of Consumer Affairs.

Immediate Office

Office of Equal Employment and Civil Rights.
Office of Executive Operations.
Office of Orphan Products Development.
Office of Biotechnology.
Office of Small Business, Scientific, and Trade Affairs.
AIDS Coordination Staff.
Ombudsman.

Center for Drug Evaluation and Research [1]

Office of Management

Division of Management and Budget.
Division of Information Systems Design.
Division of Drug Information Resources.
Medical Library.

Office of Compliance

Division of Drug Labeling Compliance.
Division of Drug Quality Evaluation.
Division of Manufacturing and Product Quality.
Division of Scientific Investigations.
Division of Regulatory Affairs.

Office of Epidemiology and Biostatistics

Division of Epidemiology and Surveillance.
Division of Biometrics.

Office of Drug Evaluation I

Division of Cardio-Renal Drug Products.
Division of Neuropharmacological Drug Products.
Division of Oncology and Pulmonary Drug Products.
Division of Medical Imaging, Surgical, and Dental Drug Products.
Division of Gastrointestinal and Coagulation Drug Products.

Office of Drug Evaluation II

Division of Metabolism and Endocrine Drug Products.
Division of Anti-Infective Drug Products.
Division of Anti-Viral Drug Products.

Office of Drug Standards

Division of OTC Drug Evaluation.
Division of Drug Advertising and Labeling.

Office of Generic Drugs

Division of Chemistry I.
Division of Chemistry II.
Division of Bioequivalence.

Office of Research Resources

Division of Research and Testing.
Division of Drug Analysis.
Division of Biopharmaceutics.
Division of Clinical Pharmacology.

Center for Biologics Evaluation and Research [2]

Office of Management

Division of Management and Budget.

Office of Compliance

Office of Biological Product Review

Division of Product Quality Control.
Division of Biological Investigational New Drugs.
Division of Product Certification.

Office of Biologics Research

Division of Bacterial Products.
Division of Transfusion Science.
Division of Hematology.
Division of Virology.
Division of Biochemistry and Biophysics.
Division of Cytokine Biology.
Division of Microbiology.

Center for Food Safety and Applied Nutrition [3]

Office of Management

Division of Program Operations.
Division of Administrative Operations.
Division of Information Resources Management.

Office of Compliance

Division of Regulatory Guidance.
Division of Food and Color Additives.
Division of Cooperative Programs.

Office of Toxicological Sciences

Division of Toxicological Studies.
Division of Toxicological Review and Evaluation.
Division of Pathology.
Division of Mathematics.

Office of Physical Sciences

Division of Contaminants Chemistry.
Division of Colors and Cosmetics.
Division of Food Chemistry and Technology.

Office of Nutrition and Food Sciences

Division of Consumer Studies.
Division of Nutrition.

Center for Devices and Radiological Health [1]

Office of Management Services

Division of Planning, Evaluation, and Information Services.
Division of Resource Management.

Office of Information Systems

Division of Computer Services.
Division of Information Resources.

Office of Health Physics

Office of Health Affairs [4]

Office of Standards and Regulations

Office of Compliance and Surveillance [4]

Division of Management Information.
Division of Compliance Programs.
Division of Compliance Operations.
Division of Product Surveillance.
Division of Standards Enforcement.

Office of Device Evaluation [4]

Division of Cardiovascular Devices.
Division of Gastroenterology/Urology and General Use Devices.
Division of Anesthesiology, Neurology, and Radiology Devices.
Division of Obstetrics/Gynecology, Ear, Nose, Throat, and Dental Devices.
Division of Surgical and Rehabilitation Devices.
Division of Clinical Laboratory Devices.
Division of Ophthalmic Devices.

Office of Science and Technology

Division of Mechanics and Materials Science.
Division of Life Sciences.
Division of Physical Sciences.
Division of Biometric Sciences.
Division of Electronics and Computer Sciences.

Office of Training and Assistance

Division of Consumer Affairs.
Division of Small Manufacturers Assistance.
Division of Technical Development.
Division of Professional Practices.
Division of Training Support.

Center for Veterinary Medicine [1]

Office of Management

Office of Surveillance and Compliance

Division of Compliance.
Division of Surveillance.
Division of Animal Feeds.
Division of Voluntary Compliance and Hearings Development.

[1] Mailing address: 5600 Fishers Lane, Rockville, MD 20857.

[2] Mailing address: 8800 Rockville Pike, Bldg. 29, Bethesda, MD 20892.

[3] Mailing address: 200 C St. SW., Washington, DC 20204.

[4] Mailing address: 1390 Piccard Dr., Rockville, MD 20850.

Office of New Animal Drug Evaluation

Division of Biometrics and Production Drugs.
Division of Chemistry.
Division of Therapeutic Drugs for Food Animals.
Division of Therapeutic Drugs for Non-Food Animals.
Division of Toxicology and Environmental Sciences.

Office of Science

Division of Veterinary Medical Research.

National Center for Toxicological Research [5]

Office of Management

Division of Research Information and Management Services.
Division of Facilities Engineering and Maintenance.

Office of Research

Division of Reproductive and Developmental Toxicology.
Division of Genetic Toxicology.
Division of Biochemical Toxicology.
Division of Comparative Toxicology.

Office of Research Services

Division of Microbiology.
Division of Veterinary Services.
Division of Chemistry.

§ 5.115 [Amended]

3. Section 5.115 *Field structure* is amended by removing "Rm. 1222" and replacing it with "1222 P.O. Bldg." appearing under the heading "MIDWEST REGION" for the "Chicago District Office".

Dated: February 21, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-4732 Filed 2-27-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

Records and Reports of Listed Chemicals and Certain Machines

AGENCY: Drug Enforcement Administration (DEA).

ACTION: Final rule.

SUMMARY: This final rule amends the regulations implementing the Chemical Diversion and Trafficking Act of 1988 by excluding a specific transaction from the requirement to maintain records as required by § 1310.03.

EFFECTIVE DATE: April 1, 1991.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, telephone (202) 307-7297.

SUPPLEMENTARY INFORMATION: On October 22, 1990, a notice of proposed rulemaking was published in the **Federal Register** (55 FR 42586). The Deputy Assistant Administrator, Office of Diversion Control, proposed to amend the regulations implementing the Chemical Diversion and Trafficking Act of 1988 (Pub. L. 100-690) by excluding a specific transaction from the requirement to maintain records as required by § 1310.03. The DEA has determined that a non-regulated person who acquires a listed chemical for consumption or end use shall not be required to maintain receipt records for such acquisitions when the person becomes a regulated person by virtue of an infrequent distribution of the listed chemical. The proposed rule provided for interested parties to submit comments and objections. One party submitted comments in favor of the proposed rule.

The Deputy Assistant Administrator, Office of Diversion Control, hereby certifies that this final rule will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. This rule is not a major rule for the purposes of Executive Order (E.O.) 12291 of February 17, 1981. Pursuant to sections 3(c)(3) and 3(e)(2)(c) of Executive Order 12291, this rule has been reviewed by the Office of Management and Budget.

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

List of Subjects in 21 CFR Part 1310

Drug Enforcement Administration, Drug traffic control, Reporting and recordkeeping requirements.

For reasons set out above, 21 CFR part 1310 is amended as follows:

PART 1310—[AMENDED]

1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

2. Section 1310.03 is amended by adding at the end the following:

§ 1310.03 Persons required to keep records and file reports.

* * * * *

However, a non-regulated person who acquires listed chemicals for internal consumption or "end use" and becomes a regulated person by virtue of infrequent or rare distribution of a listed chemical from inventory, shall not be required to maintain receipt records of listed chemicals under this section.

Dated: January 23, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-4654 Filed 2-27-91; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Alabama Regulatory Program; Regulatory Reform

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment to the Alabama regulatory program (hereinafter referred to as the Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment includes changes to Alabama's regulations relating to the extraction of coal incidental to the extraction of other minerals. The amendment is intended to make the State's regulations consistent with the revised Federal regulations contained in 30 CFR chapter VII.

EFFECTIVE DATE: February 28, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Jesse Jackson, Jr., Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 280 West Valley Avenue, Room 302, Homewood, Alabama 35209. Telephone: (205) 731-0890.

SUPPLEMENTARY INFORMATION:

I. Background on the Alabama Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

[5] Mailing address: Jefferson, AR 72079-9502.

I. Background on the Alabama Program

On May 20, 1982, the Secretary of the Interior conditionally approved the Alabama program. Information regarding general background on the Alabama program, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Alabama program can be found in the May 20, 1982, **Federal Register** (47 FR 22030). Actions taken subsequent to the conditional approval of the Alabama program are identified at 30 CFR 901.10 and 901.15.

II. Submission of Amendment

Pursuant to the Federal regulations at 30 CFR 732.17, OSM informed Alabama on February 7, 1990, in two separate letters, that a number of the Alabama regulations were less effective than or inconsistent with the revised Federal requirements. One of the letters addressed the Alabama regulations regarding the extraction of coal incidental to the extraction of other minerals, and the other letter addressed all other Alabama regulations which were less effective than the Federal requirements as revised between June 8, 1988 and August 30, 1989.

By letter dated July 16, 1990 (Administrative Record No. AL–462), Alabama submitted to OSM a State program amendment package consisting of numerous revisions to the Alabama program regulations, including an entirely new subchapter, 880–X–2E, on the extraction of coal incidental to the extraction of other minerals. Alabama's amendment package also included revisions to its program regulations which were not required by Federal rule changes. Only subchapter 880–X–2E is being approved in this rule.

OSM announced receipt of the proposed amendment in the September 6, 1990 **Federal Register** (55 FR 36660), and in the same notice opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on October 9, 1990.

Alabama's proposed revisions which were not required by Federal rule changes were inadvertently omitted from the September 6, 1990 **Federal Register** notice (55 FR 36660). They will be addressed in a **Federal Register** notice to be published shortly. Also, readvertised in that notice will be those proposed changes other than subchapter 880–X–2E which were properly advertised in the September 6, 1990, **Federal Register** notice (55 FR 36660).

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Alabama program.

REVISIONS TO ALABAMA'S REGULATIONS THAT ARE SUBSTANTIVELY IDENTICAL TO THE CORRESPONDING FEDERAL REGULATIONS

State regulation	Subject	Federal counterpart
Revised:		
880–X–2A–.07(1)(c).	Incidental Extraction (Applicability).	30 CFR 700.11(a)(4)
880–X–2E–.01.	Scope	30 CFR 702
880–X–2E–.02.	Definitions	30 CFR 702
880–X–2E–.03.	Information Collection.	30 CFR 702
880–X–2E–.04.	Application Requirements and Procedures.	30 CFR 702
New:		
880–X–2E–.05.	Contents of Application for Exemption.	30 CFR 702
880–X–2E–.06.	Public Availability of Information.	30 CFR 702
880–X–2E–.07.	Requirements for Exemption.	30 CFR 702
880–X–2E–.08.	Conditions of Exemption and Right of Inspection and Entry.	30 CFR 702
880–X–2E–.09.	Stockpiling of Minerals.	30 CFR 702
880–X–2E–.10.	Revocation and Enforcement.	30 CFR 702
880–X–2E–.11.	Reporting Requirements.	30 CFR 702

Because the proposed revisions listed above are identical in meaning to the corresponding Federal regulations, the Director finds that Alabama's proposed rules are no less effective than the Federal rules.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the September 6, 1990 **Federal Register** (55 FR 36660) ended on October 9, 1990. The scheduled public hearing was not held as no one requested an opportunity to provide testimony.

The Advisory Council on Historic Preservation, the Alabama Historical Commission, and a private citizen submitted written comments which were not applicable to this rulemaking. The comments will be addressed in the final rule which will cover the remainder of Alabama's original July 16, 1990, submittal.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Alabama program.

The Mine Safety and Health Administration concurred without comment.

The U.S. Fish and Wildlife Service (FWS) commented that OSM should initiate formal consultation with the FWS including a request for a biological opinion concerning the impacts of underground and surface mining on streams and watersheds within the range of the flattened musk turtle, an endangered species. The Director notes that the comment relates to a portion of the amendment not being addressed at this time and is therefore outside the scope of this rulemaking. The comment will be addressed in the final rule which will cover the remainder of Alabama's original July 16, 1990, submittal.

The Soil Conservation Service generally supported the amendment but felt that the extended period of responsibility for establishing vegetation was excessive. The Director notes that the comment relates to a portion of the amendment not being addressed at this time and is therefore outside the scope of this rulemaking. The comment will be addressed in the final rule which will cover the remainder of Alabama's original July 16, 1990, submittal.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendment to the Alabama permanent program regulations at 880–X–2E, as submitted on July 16, 1990.

The Federal rules at 30 CFR Part 901 codifying decisions concerning the Alabama program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage the State to conform its program with the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environment Protection Agency (EPA) with respect to any provisions of a State program amendment that relates to air or water quality standards promulgated

under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

Effect of the Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to a State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved programs. In the oversight of the Alabama program, the Director will recognize only the approved program, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Alabama of such provisions.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that pursuant to section 702(d) of SMCRA, no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements, rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 15, 1991.

Jeffrey Jarrett,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, Part 901 of the Code of Federal Regulations is amended as set forth below:

PART 901—ALABAMA

1. The authority citation for part 901 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 901.15, a new paragraph (k) is added to read as follows:

§ 901.15 Approval of regulatory program amendments.

* * * * *

(k) The following amendment to the Alabama regulations submitted to OSM on July 16, 1990 is approved effective February 28, 1991.

(1) Amendments to the following Alabama Surface Mining Commission regulations:

880–X–2A–.07(1)(c) Applicability
880–X–2E–.01 Scope
880–X–2E–.02 Definitions
880–X–2E–.03 Information Collection
880–X–2E–.04 Application Requirements and Procedures

(2) Addition of the following Alabama Surface Mining Commission regulations:

880–X–2E–.05 Contents of Application for Exemption
880–X–2E–.06 Public Availability of Information
880–X–2E–.07 Requirements for Exemption
880–X–2E–.08 Conditions of Exemption and Right of Inspection and Entry
880–X–2E–.09 Stockpiling of Minerals
880–X–2E–.10 Revocation and Enforcement
880–X–2E–.11 Reporting Requirements

[FR Doc. 91–4656 Filed 2–27–91; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 213

Administration of Lands

AGENCY: Forest Service, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: By separate designation order, signed January 18, 1991, the Secretary of Agriculture has designated the Butte Valley Land Utilization Project (CA–22), located in Siskiyou County, California, as the Butte Valley National Grassland, to be administered by the Forest Supervisor, Klamath National Forest, Yreka, California. This final rule amends the table listing national grasslands at 36 CFR 213.1 to reflect this change in designation.

EFFECTIVE DATE: February 28, 1991.

FOR FURTHER INFORMATION CONTACT: Phil Bayles, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 453–9345.

SUPPLEMENTARY INFORMATION: The Secretary of Agriculture has determined that designation of the Butte Valley area in Siskiyou County, California, as a National Grassland is in the public interest and will foster long-term planning and management of the wildlife, water, soils, and vegetation of the area. Accordingly, pursuant to the authority granted at 50 U.S.C. 525, as amended 7 U.S.C. 1010–1012, the Secretary has signed an order, dated January 18, 1990, designating this area as a National Grassland. A copy of the Secretary's order is set out at the end of this rule for informational purposes, but will not be published in the Code of Federal Regulations. A component of the National Forest System, National Grasslands are managed under the principles of multiple-use, sustained yield and are subject to the same basic statutes that apply to National Forest management. Management direction for the Butte Valley National Grassland will be provided by the Klamath National Forest Land and Resource Management Plan when it is approved.

The rules at 36 CFR 213.1 provide for a listing of all National Grasslands designated by the Secretary. The final rule amends the listing to reflect the Secretary's order. This is a technical amendment to an existing rule which in and of itself has no effect on the public or the manner in which the public conducts business with the Forest Service, which administers the Grasslands. In evaluating the designation of this area as a grassland, the Forest Service gave direct notice and opportunity to comment to all government agencies and organizations with an interest in the designation of the Butte Valley area and held a general public meeting to receive comments on the designation. By law, designation of a grassland is done by separate order and not through rulemaking. Therefore, pursuant to 5 U.S.C. 553, prior public notice and opportunity to comment on this rule are unnecessary and there is good cause for the rule to take effect upon publication in the **Federal Register**.

As a technical amendment, this rule is not subject to review under Executive Order 12291. Moreover, the rule has no

impact on small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and imposes no paperwork burden on the public as defined in the Paperwork Reduction Act. Further, because this is a technical amendment, this rule has no effect on the human environment, individually or cumulatively and is, therefore, categorically excluded from documentation in an environmental assessment or an environmental impact statement (40 CFR 1508.4).

List of Subjects in 36 CFR Part 213

National grasslands, Grazing lands.

Therefore, for the reasons set forth in the preamble, part 213 of title 36 of the Code of Federal Regulations is hereby amended as follows:

PART 213—[AMENDED]

1. The authority citation for part 213 continues to read:

Authority: 50 Stat. 525, as amended, 7 U.S.C. 1010–1012.

§ 213.1 [Amended]

2. Revise the table in paragraph (e) to add the following in alphabetical order:

State in which grassland is located	National grassland	Counties where located
California	Butte Valley	Siskiyou.

Dated: February 19, 1991.

George M. Leonard,

Associate Deputy Chief.

Designation Order

Butte Valley National Grassland, Siskiyou County, CA

Pursuant to the authority granted to the Secretary of Agriculture 50 Stat. 525, as amended; 7 U.S.C. 1010–1012 the Butte Valley Land Utilization Project (CA–22), located in Siskiyou County, California, is hereby designated as the Butte Valley National Grassland effective this date.

These 18,425 acres, of the 19,020 acres of land within the boundary of Butte Valley National Grassland, were purchased under the authority of the Bankhead-Jones Farm Tenant Act of 1937 and are to be administered by the Goosenest Ranger District of Klamath National Forest.

The following areas, comprising 19,020 acres, of which 18,425 acres are National Forest System lands and 595 acres are other lands, are included in the designation:

Mount Diablo Meridian

T. 46 N., R. 1 W.,
Secs. 3, 4, and 5;
Sec. 6, E½
Sec. 7;
Sec. 8, N½, N½S½, E½SW¼SE¼ and SE¼SE¼;
Sec. 9, N½;
Sec. 16, N½;
Sec. 18, N½.
T. 47 N., R. 1 W.,
Secs. 3 to 10, inclusive;
Secs. 15 to 21, inclusive;
Secs. 27 to 30, inclusive;
Sec. 31, E½, NE¼NW¼;
Secs. 32 and 33.
T. 47 N., R. 2 W.,
Sec. 23, SE¼;
Sec. 24, S½;
Sec. 25, NE¼.

Dated: January 18, 1991.

Clayton Yeutter,

Secretary.

[FR Doc. 91–4759 Filed 2–27–91; 8:45 am]

BILLING CODE 3410–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[FRL–3909–1]

Delegation of Authority to the State of New Mexico for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP)

AGENCY: Environmental Protection Agency.

ACTION: Notice of delegation of authority.

SUMMARY: The Environmental Protection Agency (EPA) announces the delegation of full authority to the State of New Mexico to implement and enforce additional source categories of the New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) including the subsequent revisions and amendments to the standards for which full authority had been delegated to the State by the previous delegation agreement of March 15, 1985. The last coverage update of the delegation agreement was approved on February 8, 1990, and a notice of it was published in the **Federal Register** (55 FR 5990). Based on the State's request of June 8, 1990, the EPA has now granted full authority to the State for the NSPS and NESHAP through December 4, 1989, applicable only in certain areas of the State, and partial authority for new and amended standards after that date.

This delegation of authority does not apply to: (1) The sources located in Bernalillo County, New Mexico, (2) the sources located on Indian lands as specified in the delegation agreement and in this notice, (3) the standards of performance for New Residential Wood Heaters (subpart AAA) under 40 CFR part 60, and (4) the NESHAP radionuclide standards specified under 40 CFR part 61.

EFFECTIVE DATE: January 30, 1991.

ADDRESSES: The State's request and delegation agreement may be requested by writing to one of the following addresses:

Chief, Planning Section (6T–AP), Air Programs Branch, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 655–7214.

Chief, Air Quality Bureau, New Mexico Environmental Improvement Division, 1190 St. Francis Drive, Sante Fe, New Mexico 87503, Telephone: (505) 827–0042.

All other requests, reports, applications and such other communications which are required to be submitted under 40 CFR part 60 and 40 CFR part 61 (including the notifications required under Subpart A of the regulations) for the affected facilities, in areas outside of Indian lands or Bernalillo County, should be sent directly to the State of New Mexico at the above address. Sources located on all Indian lands (including Bernalillo County), sources subject to the standards of performance for New Residential Wood Heaters—subpart AAA under 40 CFR part 60 (except for Bernalillo County), and sources subject to the NESHAP radionuclides under 40 CFR part 61 in the State of New Mexico should submit the information specified above to the Chief, Air Enforcement Branch, EPA Region 6 Office at the address given in this notice. The affected sources located within the boundaries of Bernalillo County, outside of Indian lands, should submit all of the required information (except for the NESHAP radionuclides under 40 CFR part 61) to Director, The Albuquerque Environmental Health Department, The City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P.E., Planning Section, Air Programs Branch, United States Environmental Protection Agency, Region 6, 145 Ross Avenue, Dallas, Texas 75202, telephone number (214) 655–7214.

SUPPLEMENTARY INFORMATION: Sections 111(c) and 112(d) of the Clean Air Act allow the Administrator of the EPA to delegate EPA's authority to any State which can submit adequate regulatory procedures for implementation and

enforcement of the NSPS and NESHAP programs.

On October 19, 1984, New Mexico requested full delegation of authority for the implementation and enforcement of NSPS through March 14, 1984, and NESHAP through December 9, 1983. The State also requested partial authority for the technical and administrative review of new or amended NSPS and NESHAP in the October 19, 1984 letter. The delegation request was granted to the State subject to the conditions and limitations specified in the delegation agreement which was approved on March 15, 1985. The March 15, 1985, delegation agreement provided full authority for the State to implement and enforce the NSPS and NESHAP through March 14, 1984, and December 9, 1983, respectively. Also, the State received partial authority for implementation of NSPS and NESHAP subparts effective after the specified dates in the State regulations and for amendments of fully delegated NSPS and NESHAP subparts after the dates specified above. The State's authority was approved only for the areas outside the Indian lands and Bernalillo County. The last coverage update of the delegation agreement was approved on February 8, 1990, and a notice of it was published in the Federal Register (55 FR 5990).

On June 8, 1990, the NMEID requested the EPA to grant full authority for additional source categories and amendments to the fully delegated NSPS and NESHAP subparts by extending the coverage date through December 4, 1989, for the NSPS and NESHAP. Based on review of State's Air Quality Control Regulations (AQCR) 750 (for NSPS) and 751 (for NESHAP), the EPA delegated full authority to the State as requested in the letter of June 8, 1990. AQCRs 750 and 751 incorporate the Federal NSPS and NESHAP by reference through the date specified above except for the performance standards for New Residential Wood Heaters—subpart AAA under 40 CFR part 60 and the NESHAP radionuclide standards under 40 CFR part 61. The provisions and conditions specified in the March 15, 1985, delegation agreement and its supplements shall remain unchanged and effective except the revision of the appropriate dates as cited above. The revised authorized dates have been listed in Table 1 for NSPS and Table 2 for NESHAP. These tables noting the revised effective date have been approved by the Regional Administrator, and are thereby incorporated as part of the March 15, 1985, delegation agreement. No authority has been delegated for the standards of performance for New Residential Wood Heaters—Subpart AAA under 40 CFR part 60 and the NESHAP radionuclide standards specified under 40 CFR part 61.

Today's notice informs the public that the EPA has expanded the State's full authority to implement and enforce the NSPS and NESHAP through December 4, 1989. All reports required pursuant to the Federal NSPS and NESHAP (40 CFR part 60 and 40 CFR part 61) by sources located in the State of New Mexico, in areas outside of Indian lands or Bernalillo County, should be submitted directly to the New Mexico Health and Environment Department, Environmental Improvement Division, Air Quality Bureau, 1190 St. Francis Drive, Santa Fe, New Mexico 87503. Sources located on all Indian lands (including Bernalillo County), sources subject to the standards of performance for New Residential Wood Heaters—subpart AAA under 40 CFR part 60 (except for Bernalillo County), and sources subject to the NESHAP radionuclides under 40 CFR part 61 in the State of New Mexico should apply to the Chief, Air Enforcement Branch, EPA Region 6 Office at the address given in this notice. The affected sources located within the boundaries of Bernalillo County, outside of Indian lands, should submit all of the required information (except for the NESHAP radionuclides under 40 CFR part 61) to Director, The Albuquerque Environmental Health Department, the City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.

The Office of Management and Budget has exempted this information notice from the requirements of section 3 of Executive Order 12291.

This delegation is issued under the authority of section 111(c) and 112(d) of the Clean Air Act, as amended (42 U.S.C. 7411(c) and 7412(d)).

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Cement industry, Coal, Copper, Electric power plants, Fossil-Fuel fired steam generators, Glass and glass products, Grain, Iron, Lead, Metals, Motor vehicles, Nitric acid plants, Paper and paper industry, Petroleum, Phosphate, Fertilizer, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc.

List of Subjects in 40 CFR Part 61

Air pollution control, Asbestos, Benzene, Beryllium, Hazardous materials, Mercury, Vinyl chloride.

Dated: January 30, 1991.

Robert E. Layton Jr.,

Regional Administrator.

[FR Doc. 91-4758 Filed 2-27-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-284; RM-6138, RM-6474, and RM-6489]

FM Radio Broadcasting Services; Angola, Berne, Decatur, Lagrange, and Roanoke, IN; Brooklyn and Hudson, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a Notice of Proposed Rule Making, 53 FR 25350, July 6, 1988, and a Request for Supplemental Information and Order to Show Cause, 55 FR 12869, April 6, 1990, the Commission adopted a Second Report and Order in this proceeding which grants the counterproposal of Midwest Communications Company, licensee of Station WQTZ(FM), Channel 224A, Decatur, Indiana, to upgrade its channel by substituting Channel 286B1 to provide that community with an expanded FM broadcast service. To accommodate the Decatur upgrade, the Commission also ordered the substitutions of Channel 224A for Channel 230A at Berne, Indiana, and Channel 231A for Channel 286A at Roanoke, Indiana. While Station WQTX(FM), Roanoke, had objected to changing from Channel 286A to Channel 231A at Roanoke, the Commission ordered the change because the channels are equivalent for allotment purposes. The Commission also granted the request of Station WLKI(FM), Angola, Indiana, to move from Channel 261A to Channel 262A. All of the above allotments can be made in compliance with the Commission's minimum distance separation requirements using the following sites: for Decatur, a site located at least 20.1 kilometers northwest of the community of coordinates 40-58-33 and 85-04-23; for Angola, a site located at coordinates 41-40-51 and 85-00-02; for Berne, a site located at least 2.5 kilometers north of the community at coordinates 50-40-46 and 84-57-17; and for Roanoke, a site specified in its construction permit at coordinates 40-55-00 and 85-27-30 or at a site specified in its pending modification application at coordinates 40-59-54 and 85-15-58. Since the

reference coordinates for all of these allotments are located within 320 kilometers (200 miles) of the U.S.-Canadian boarder, concurrence by the Canadian government has been obtained.

EFFECTIVE DATE: April 11, 1991.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order, MM Docket No. 88-284, adopted February 6, 1991, and released February 25, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Indiana, is amended by removing Channel 224A and adding Channel 286B1 at Decatur, removing Channel 261A and adding Channel 262A at Angola, removing Channel 230A and adding Channel 224A at Berne, and removing Channel 286A and adding Channel 231A at Roanoke.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-4777 Filed 2-27-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-210]

Radio Broadcasting Services; Odem, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of Capri Spanish Broadcasting, Inc., the Commission substitutes Channel 252C3 for Channel 252A at Odem, Texas, and modifies the license issued to Capri for Station KKHQ(FM) to specify operation on the higher powered channel. Coordinates for Channel 252C3 at Odem, Texas, are 27-53-31 and 97-30-11. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 11, 1991.

FOR FURTHER INFORMATION CONTACT: Fawn E. Wilderson, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-210, adopted February 4, 1991, and released February 25, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 252A and adding Channel 252C3 at Odem.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-4778 Filed 2-27-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74-14; Notice 69]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This agency has discovered some errors in the most recent edition of title 49 of the Code of Federal Regulations, with respect to NHTSA's occupant crash protection standard. This notice corrects those errors, so that the replacement for this edition of the Code of Federal Regulations will be accurate. No new obligations or duties are imposed on any party as a result of these corrections, since the corrections merely remove obsolete provisions from the standard.

EFFECTIVE DATE: February 28, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen Kratzke, Office of Chief Counsel, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Mr. Kratzke can be reached by telephone at (202) 366-2992.

SUPPLEMENTARY INFORMATION: On June 5, 1989 (54 FR 23986), NHTSA published a final rule amending Standard No. 208, Occupant Crash Protection (49 CFR 571.208). S11.6 of Standard No. 208 sets forth the positioning procedures for the feet of Hybrid III test dummies positioned at the driver's or right front passenger's position.

Before the effective date of the June 5, 1989 final rule (December 4, 1989), the feet of Hybrid III test dummies could be positioned either in accordance with the procedures for positioning the feet of Hybrid II test dummies or in accordance with some less specific positioning procedures set forth in S11.6.1 through S11.6.3. However, the June 5, 1989 rule took away the option of using the less specific positioning procedure. Instead, that rule required that the feet of Hybrid III test dummies be positioned according to the procedures for positioning the feet of Hybrid II test dummies. The agency expressed this by revising S11.6 in the June 5, 1989 final rule. NHTSA believed that this amendatory language would remove all of S11.6, including the subordinate sections S11.6.1 through S11.6.3, from the version of Standard No. 208 printed in the Code of Federal Regulations, and replace it with the revised S11.6.

However, the October 1, 1990 version of title 49 of the Code of Federal Regulations shows only the old language in S11.6 removed and the new S11.6 appearing in its place. Each of the subordinate paragraphs to the old version of S11.6 still appear in the text of Standard No. 208. The result is that S11.6 now specifies that the feet of the Hybrid III test dummy shall be positioned using the same procedures specified for the feet of the Hybrid II test dummy, while S11.6.1 through S11.6.3 provide an option of either using the positioning procedures for the Hybrid II test dummy or some less specific procedures. This is confusing to the reader and does no effectuate the agency's intention of removing the

option of using the less specific positioning procedures. This amendment will remedy this problem by ensuring that the next revision of title 49 of the Code of Federal Regulations removes S11.6.1 through S11.6.3 from Standard No. 208.

This amendment imposes no duties or responsibilities on any party, nor does it alter any existing obligations. Instead, this amendment will simply ensure that the public will have a correct copy of Standard No. 208 in title 49 of the Code of Federal Regulations. Accordingly, NHTSA finds for good cause that notice and opportunity for comment on this amendment are unnecessary, and this amendment is effective as soon as this notice is published.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR 571.208 is amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.208 [Amended]

2. S11.6.1 through S11.6.3 are removed.

Issued on February 25, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91–4766 Filed 2–27–91; 8:45 am]

BILLING CODE 4910–59–M

Proposed Rules

Federal Register
Vol. 56, No. 40
Thursday, February 28, 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 1007

[DA-91-004]

Milk in the Georgia Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend certain provisions of the Georgia Federal milk order for the months of February through August 1991. The proposal would suspend the requirement that at least 10 days' production of any producer whose milk is diverted to nonpool plants be physically received at a pool plant if the diverted milk is to be pooled, allow the diversion of nonmember milk by a cooperative association to nonpool plants, and suspend the 25-percent limitation on the amount of milk that may be diverted by cooperative associations. In addition, the proposed suspension raises the question of whether the diversion limitations on nonmember producer milk diverted by a proprietary handler should also be suspended.

The proposed suspension was requested by a cooperative association representing producers supplying the Georgia market to maintain the pool status of the cooperative's members and to deal with a major disruption in the milk marketing situation in the Southeast.

DATES: Comments are due not later than March 7, 1991.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–7183.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that diary farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

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

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions of the order regulating the handling of milk in the Georgia marketing area is being considered for the months of February through August 1991:

1. Section 1007.13(b)(2);
2. Section 1007.13(b)(4);
3. The proposed suspension of paragraphs (b)(2) and (b)(4) of Section 1007.13 raised the issue of whether paragraph (b)(5) should also be suspended.

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include February 1991 in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

Southern Milk Sales, Inc. (SMS), an association of producers that supplies some of the market's fluid milk needs and handles some of the market's reserve milk supplies, requested the suspension of the order's "tough base" and diversion limitation provisions in order to maintain the pool status of its producers that historically have been associated with the Georgia market. For the months of February through August 1991, the suspension would remove the requirement that not less than 10 days' production of each producer whose milk is diverted be physically received at a pool plant. The restriction that a cooperative association divert only the milk of its member producers and the percentage limits on the aggregate amount of milk that a cooperative may divert to nonpool plants for its account also would be suspended for the same months. In addition, the proposed suspension raises the issue of whether the diversion limits on a proprietary handler's producer milk supply also should be considered.

SMS states that the percentage of its milk supply diverted to nonpool plants, together with the volume delivered to a manufacturing pool plant, equaled 22.4 percent of the cooperative's total milk supply in January 1991, or nearly as much as the order allows. SMS also observes that a pool distributing plant operator under the order has increased its proportion of deliveries from independent producers, and that as seasonal surpluses develop the plant probably will continue to receive increasing quantities of nonmember milk while ceasing deliveries of cooperative supplies. The cooperative projects that under these conditions, SMS probably will have great difficulty in maintaining the pool status of its members' producer milk.

A further market complication noted by SMS is the February 11, 1991, filing for Chapter 11 Bankruptcy by the Finevest Corporation, which operates a number of milk processing plants in the southeastern United States. SMS predicts that Finevest's action will result in major disruption in the marketing of milk in the Southeast which will affect the ability of handlers to maintain the pool status of their producers.

SMS notes that production bases under the Georgia order have already

been earned for the current year, and producers will be unable to benefit from participation in the pool without having earned such bases. Therefore, the cooperative concludes, the integrity of the Georgia order pool will be protected in the absence of diversion limits.

SMS states that the requested suspension is needed to deal with expected market disruptions and increasing milk production that may make the pool qualification of its members' milk production impossible under the order's existing provisions.

List of Subjects in 7 CFR Part 1007

Milk marketing orders.

The authority citation for 7 CFR part 1007 continues to read as follows:

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

Signed at Washington, DC, on: February 22, 1991.

L.P. Massaro,

Acting Administrator.

[FR Doc. 91–4660 Filed 2–27–91; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1207

[FV–91–235]

Invitation To Submit Proposals for Amending the Potato Research and Promotion Plan

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice: Invitation to submit proposals for amending the Potato Research and Promotion Plan.

SUMMARY: The Agricultural Marketing Service invites submission of proposals for amendment of the Potato Research and Promotion Plan (Plan), or components of the Plan. The Plan is authorized by the Potato Research and Promotion Act (Act) which was amended by the Food, Agriculture, Conservation, and Trade Act of 1990. The amended Act authorizes the Secretary of Agriculture to issue amendments to the Plan. The amendments to the Act authorize the Plan to (1) eliminate the refund of assessments, (2) provide assessments for imported potatoes, and (3) provide for a referendum within two years to determine if the amendments to the Plan should continue in effect. Interested persons are also invited to submit views on whether it would be beneficial to hold a public meeting during an ensuing comment period to discuss the proposals.

DATES: Proposals must be received by April 1, 1991, to be ensured of consideration.

ADDRESSES: Proposals should be sent in triplicate to: Docket Clerk, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456. Please state that your comments refer to Docket Number FV–91–235. Comments received may be inspected at the office of the Docket Clerk, USDA–AMS, room 2525, South Building, 14th and Independence Avenue SW., between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Richard H. Mathews at the above address; facsimile number 202–447–5698; telephone (202) 447–4140.

SUPPLEMENTARY INFORMATION: The Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624), signed on November 28, 1990, amended the Potato Research and Promotion Act (Act) and authorized the Secretary of Agriculture to amend the Plan which established a research and promotion program for potatoes. The program is funded by assessments of $0.02 per hundredweight of potatoes now levied on domestic potatoes handled by first handlers. The program is operated by the National Potato Promotion Board (Board) which consists of 95 members appointed by the Secretary of Agriculture from industry nominees.

The amendments to the Act to be addressed in any proposed amendments to the Plan would: (1) Eliminate the refund of assessments provision, but would, during the period between issuance of amendments to the Plan and prior to the referendum, establish an escrow account of 10 percent of the assessments collected to refund, upon request, assessments paid should this amendment fail to be approved in referendum; (2) provide for an assessment on imported potatoes equal to that imposed on domestic production; and (3) provide for a referendum within two years to determine if amendments should continue in effect.

Pursuant to the amended Act, any producer or producer organization may submit a proposal for amending the Plan to conform to the amended Act. Accordingly, notice is hereby given that the Department of Agriculture will receive written proposals for amending the Plan or for various provisions thereof. Interested persons are also invited to submit views on whether it would be beneficial to hold a public meeting during an ensuing comment period to discuss the proposals. Any scheduled meeting would be held during the comment period.

In submitting proposals to amend the Plan, the following must be included: (1) The proposed amendment language to the Plan; (2) a separate description of the proposed amendments' provisions; (3) an explanation of the nature and purpose of proposed amendments; (4) identification of the section of the amended Act that would be implemented by the amendments' provisions; and (5) any other pertinent information concerning the proposal that would assist in this process of implementing the amended Act.

All proposals consistent with the amended Act will be published in the **Federal Register** for public comment. All views received will be considered in the development of final amendments to the Plan.

List of Subjects in 7 CFR Part 1207

Administrative practice and procedure, Advertising, Agricultural research, Potatoes, Potato Promotion, and Reporting and recordkeeping requirements.

Authority: The Food, Agriculture, Conservation, and Trade Act of 1990; Pub. L. 101–624; title XIX.

Dated: February 22, 1991.

Signed at Washington, DC.

L.P. Massaro,

Acting Administrator.

[FR Doc. 91–4768 Filed 2–27–91; 8:45 am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Parts 1413

Feed Grain, Rice, Upland and Extra Long Staple Cotton, Wheat and Related Programs

AGENCY: Commodity Credit Corporation, United States Department of Agriculture.

ACTION: Proposed rule.

SUMMARY: The Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 Act) amended the Agricultural Act of 1949 (The 1949 Act) to set forth numerous discretionary provisions which may be implemented by the Secretary of Agriculture and the Commodity Credit Corporation (CCC) with respect to the 1991 through 1995 crops of wheat, feed grains, upland and extra long staple (ELS) cotton and rice crops. This proposed rule sets forth the proposed action with respect to several of these provisions.

DATES: Comments must be received on or before March 13, 1991, in order to be assured of consideration.

ADDRESSES: Comments should be mailed to Bruce R. Weber, Director, Commodity Analysis Division, Agricultural Stabilization and Conservation Service (ASCS), U.S. Department of Agriculture (USDA), P.O Box 2415, room 3741–S, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Bradley Karmen, Agricultural Economist, Commodity Analysis Division, USDA–ASCS, room 3744–S, P.O. Box 2415, Washington, DC 20013 or call (202) 447–6923.

The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed rule and the impact of the implementation each option is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with provisions of Departmental Regulation 1512–1 and Executive Order 12291 and has been classified as "major". It has been determined that an annual effect on the economy of $100 million or more may result from implementation of the provisions of this interim rule.

The paperwork requirements imposed by this rule will not become effective until they have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. Such approval has been requested and is under consideration.

It has been determined that the Regulatory Flexibility Act is not applicable to the final rule since ASCS nor CCC is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule. It has been determined by an environmental evaluation that this action will not have significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The titles and numbers of the Federal Assistance Program to which this rule applies are: Commodity Loans and Purchases—10.051; Cotton Production Stabilization—10.052; Feed Grain Production Stabilization—10.055; Wheat Production Stabilization—10.058; Rice Production Stabilization—10.065, as found in the catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Background

The 1990 Act amended the 1949 Act to mandate certain action by the Secretary and CCC with respect to the 1991 through 1995 crops; many of these provisions are identical to provisions which were authorized by the Food Security Act of 1985 for the 1986 through 1990 crops, while others are new provisions. Accordingly, this proposed rule, in conjunction with a separate proposed rule activity, would amend 7 CFR part 1413 to set forth the determination of whether certain of these provisions would be implemented and, if implemented, the manner in which implementation would be made.

This proposed rule is published separate from other proposed amendments to 7 CFR part 1413 since these amendments focus primarily upon the implementation of discretionary acreage reduction provisions of the 1991 crops based upon announced acreage reduction factors for such crops. On December 31, 1990, the Secretary announced acreage reduction percentages at: 15 percent for wheat; 7.5 percent for corn, barley, and grain sorghum; zero percent for oats; and 5 percent for upland and ELS cotton. On January 30, 1991, a 5-percent reduction for rice was announced. Accordingly, the following determinations are proposed:

A. Implementation of Targeted Option Payments (TOP)

If an acreage limitation program is in effect for a crop of wheat, feed grains, upland cotton or rice, the Secretary may offer producers the option of increasing or decreasing the acreage reduction level, within certain restrictions, with a corresponding decrease or increase in the target price. The target price may be decreased or increased by not less than 0.5 percent nor more than 1 percent for each percentage point change in the acreage reduction level. The Secretary shall, to the extent practicable, ensure that the TOP does not have a significant effect on program participation, total production or budget outlays.

It is proposed that this provision not oe implemented for the 1991 crops. CCC will also consider comments for 1992 and subsequent crops.

B. Planting of Designated Crops on up to Half of the Announced Acreage Reduction

With respect to wheat, feed grains, upland cotton and rice, the Secretary may permit producers to plant a designated crop on one-half of the reduced acreage on the farm. The designated crops may be (a) any oilseed crop; (b) any industrial or experimental crop designated by the Secretary; and (c) any other crop, except any fruit or vegetable crop (including potatoes and dry edible beans) not designated by the Secretary as (i) an industrial or experimental crop; or (ii) a crop for which no substantial domestic production or market exist.

If producers on a farm elect to plant a designated crop, the amount of deficiency payment that producers are otherwise eligible to receive shall be reduced, for each acre that is planted to the designated crop, by an amount equal to the deficiency payment that would be made with respect to a number of acres of the crop that the Secretary considers appropriate. The Secretary must ensure that the reductions in deficiency payments are sufficient to ensure that this provision does not increase CCC outlays.

It is proposed that this provision not be implemented for the 1991 crops. CCC will also consider comments for 1992 and subsequent crops.

C. Planting of Conserving Crops on Acreage Conservation Reserve (ACR)

With respect to wheat, feed grains, upland cotton and rice, the Secretary may permit producers to plant all or any part of the ACR to be planted to sweet sorghum, guar sesame, castor beans, crambe, plantago ovato, triticale, rye, mung beans, milkweed or other commodity, if the Secretary determines that the production is needed to provide an adequate supply of the commodities, is not likely to increase the cost of the price support program and will not adversely affect farm income.

It is proposed that this provision not be implemented for the 1991 crops. CCC will also consider comments for 1992 and subsequent crops.

D. Planting of Oats on Acreage Conservation Reserve (ACR)

In any crop year that the Secretary determines that projected domestic production of oats will not fulfill the projected domestic demand for oats, the Secretary (a) may provide that acreage designated as ACR under the wheat and feed grain programs may be planted to oats for harvest; (b) may make program benefits (including loans, purchases, and

payments) available under the annual program for oats under section 105b of the 1949 Act available to producers with this paragraph and; (c) shall not make program benefits other than the benefits specified in (b) available to producers with respect to acreage planted to oats under this paragraph.

It is proposed that the planting of oats on wheat and feed grain ACR for harvest to be permitted for the 1991 crops. CCC will also consider comments for 1992 and subsequent crops.

E. Paid Land Diversion

The Secretary may make land diversion payments to producers of wheat, feed grains, upland and ELS cotton and rice, if the Secretary determines that such payments are necessary to assist in adjusting the national acreage of program crops to desirable goals.

The amount payable to producers can be prescribed by the Secretary as he deems appropriate.

If, at the time of final announcement of the acreage limitation program for upland cotton, the projected carryover of upland cotton for the crop year is equal to or greater than 8 million bales, the Secretary shall offer a paid land diversion program to producers of upland cotton. Payments are to be determined by multiplying; (i) the payment rate, of not less than 35 cents per pound, established by the Secretary; by (ii) the program payment yield established for the crop for the farm, by (iii) the number of permitted upland acres diverted on the farm. The Secretary shall limit the total acreage of upland cotton to be diverted under this paragraph to not more than 15 percent of the upland cotton crop acreage base for the farm. The Secretary may permit upland cotton producers to participate in a land diversion program at a level lower than the maximum level announced by the Secretary, at the option of the producer, if the Secretary determines that it will increase participation in the program.

No paid land diversions are proposed to be implemented for the 1991 crop of upland cotton and the 1991–95 crops of wheat, feed grains, ELS cotton and rice.

F. Malting Barley Exemption From Acreage Reduction Requirements

The Secretary may exempt producers of malting barley, as a condition of eligibility for feed grain loans, purchases and payments, from complying with the acreage reduction requirements.

It is proposed that malting barley not be exempted from the feed grain acreage reduction requirements for the 1991–95 crops.

List of Subjects in 7 CFR Part 1413

Acreage Allotment, Cotton, Disaster assistance, Feed grains, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, and Wheat.

Accordingly, it is proposed that 7 CFR part 1413 which was proposed to be revised at 56 FR 8065, February 26, 1991 would be further amended as follows:

PART 1413—[AMENDED]

1. The authority citation for 7 CFR part 1413 is revised to read as follows:

Authority: Secs. 101B, 103B, 105B, and 107B of the Agricultural Act of 1949, as amended; 7 U.S.C. 1308; 7 U.S.C. 1309; and 7 U.S.C. 1308a.

2. Section 1413.54 is added to read as follows:

§ 1413.54 Acreage reduction program provisions.

(a) Target option payments shall not be available with respect to producers of the 1991 crops of wheat, feed grains, upland cotton and rice.

(b) Acreage designated as ACR under the 1991 wheat, feed grains, upland cotton and rice programs may not be devoted to oilseeds, industrial or experimental crops, oats, or any other crop and must be devoted to approved uses as otherwise provided in this part.

(c) Paid land diversion program payments shall not be made available to producers of the 1991–95 crops of wheat, feed grains, ELS cotton, rice and the 1991 crop of upland cotton.

(d) With respect to the 1991 through 1995 crop years, in order to receive feed grain loans, purchases and payments in accordance with this part and part 1421 of this title, producers of malting barley must comply with the acreage reductioin program requirements of this part.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91–4881 Filed 2–26–91; 12:53 pm]

BILLING CODE 3410–05–M

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Parts 1497 and 1498

Food, Agriculture, Conservation, and Trade Act; Implementation

AGENCY: Commodity Credit Corporation and Agricultural Stabilization and Conservation Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 Act), which was enacted on November 28, 1990, amended the Food Security Act of 1985 with respect to statutory maximum payment limitation provisions by making such provisions applicable to additional programs and by making changes with respect to the treatment of irrevocable trusts and husbands and wives. Accordingly, this proposed rule would amend 7 CFR part 1497 to reflect these changes. In addition, this proposed rule will make technical changes to 7 CFR parts 1497 and 1498 for clarity. These amendments will be implemented with respect to the 1991 crops of commodities and conservation program contracts and agreements executed in 1991. The preamble to the proposed rule also sets forth additional examples for new programs that are effected by these rules.

DATES: Comments must be received on or before March 15, 1991, in order to be assured of consideration.

ADDRESSES: Submit comments to: Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: William E. Penn, Assistant Deputy Administrator, State and County Operations, ASCS, P.O. Box 2415, Washington, DC 20013 (202) 447–8513.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been classified "not major". It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive order 12372

which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The titles and numbers of the Federal assistance programs to which this proposed rule applies are: Commodity Loans and Purchases—10.051; Cotton Production Stabilization—10.052; Feed Grain Production Stabilization—10.055; Wheat Production Stabilization—10.058; National Wool Act Payment—10.059; Agricultural Conservation Program—10.063; Forestry Incentives Program—10.064; Rice Production Program—10.065; Emergency Livestock Assistance—10.066; Grain Reserve Program—10.067; Conservation Reserve Program—10.069, as found in the Catalog of Federal Domestic Assistance.

The Office of Management and Budget has approved the information collection requirements contained in these regulations under the provisions of 44 U.S.C. Chapter 35 and OMB Number 0560–0096 has been assigned.

Comments are requested with respect to this proposed rule and such comments shall be considered in developing the final rule.

Discussion of Changes

Major statutory revisions with respect to maximum payment limitation provisions which are applicable to certain agricultural programs were made in the Omnibus Budget Reconciliation Act of 1987 (the 1987 Act) which became effective for the 1989 crops of wheat, feed grains, upland cotton, rice, and honey; and certain Conservation Reserve Program (CRP) payments. 7 CFR parts 1497 and 1498 set forth the regulations implementing these statutory revisions and are used for determining whether a "person" is eligible to receive certain CCC payments and whether such "person" is separate and distinct from any other "person" for payment limitation purposes. 7 CFR part 1497 sets forth the provisions for determining whether a person is "actively engaged in farming" as required by these statutory revisions. 7 CFR part 1498 sets forth the provisions for determining if certain foreign individuals and entities are eligible to receive payments, loans, or benefits under the above mentioned programs.

Certain other programs administered by the Agricultural Stabilization and Conservation Service (ASCS) and the Commodity Credit Corporation (CCC) also have limitations on the maximum payments which may be received by any person. These programs include CRP contracts entered into before December 22, 1987, Agricultural Conservation Program (ACP), Forestry Incentives Program (FIP), and the Livestock Feed Program (LFP). Determinations regarding "person" determinations with respect to all of these programs except the Livestock Feed Program have been made under the provisions found in 7 CFR part 795. For the Livestock Feed Program, "person" determinations have been made under the provisions found in 7 CFR part 1497. Those provisions in 7 CFR part 1497 which relate to "actively engaged in farming" determinations and "cash rent tenant" determinations have not been applied to the Livestock Feed Program.

In addition to extending the 1985 Act payment limitation provisions to the 1991–1995 crops, the 1990 Act provides for several new programs which are subject to payment limitations. These programs include the Wetlands Reserve Program (WRP) and the Agricultural Water Quality Incentives Program (AWQIP). In addition the 1990 Act provides, for the first time, that payments made under the Wool and Mohair programs are subject to payment limitations.

In order to enhance the administration of these regulations, it is proposed that the provisions that relate to the definition of a "person" for payment limitation purposes be uniformly applied to additional programs administered by CCC and ASCS; however, CRP contracts which were previously subject to 7 CFR part 795 will continue to be subject to the provisions of such part. In order to accomplish this change it is proposed that 7 CFR part 1497 be amended and reorganized into five subparts. Subpart A would address general provisions. Subpart B would address person determinations. Subpart C would address actively engaged in farming determinations. Subpart D would address permitted entity determinations. Subpart E would address cash rent tenant determinations. Numerous paragraphs are proposed to be moved into new sections and a complete renumbering of the part is proposed in order to accomplish this improved service.

Subparts A and B would be applicable to all payments subject to this part. These payments include deficiency and land diversion payments, resource adjustment payments, disaster payments under the Agricultural Act of 1949 (the 1949 Act), marketing loan gains, loan deficiency payments, inventory reduction payments, CRP payments, ACP payments, FIP payments, WRP payments, AWQIP payments, LFP payments, Wool and Mohair price support program payments, and such other payments as may be provided under individual program regulations.

Subparts C, D, and E would also be applicable to other payments including deficiency and land diversion payments, resource adjustment payments, disaster payments under the 1949 Act, marketing loan gains (except for honey), loan deficiency payments (except for honey), inventory reduction payments, Wool and Mohair price support program payments, and such other payments as may be provided under individual program regulations.

The provisions of § 1497.1, *Applicability,* are proposed to be amended to list which subparts would be applicable for each of the programs for which a payment limitation applies and to incorporate the new programs provided for in the 1990 Act. In addition, it is proposed that a table be added to show the amount of limitation per person for each of the payments subject to the payment limitation.

The 1990 Act provides discretionary authority for the Secretary to, in the event of a transfer of ownership of land by way of devise or descent, make payments to the new owner under such contract, if the new owner succeeds to the prior owner's contract under title XII of the 1985 Act, without regard to the amount of payments received by the new owner under any multiyear contract entered into under title XII of the 1985 Act executed prior to such devise or descent. In order to implement this discretionary authority, it is proposed, in § 1497.1(a)(4)(iv) that any CRP rental payments received by an heir with respect to inherited land which was under a CRP contract at the time of inheritance shall not be taken in account when making the heir's payment limitation determination if such heir succeeds to such contract.

The provisions of § 1497.2 *Administration,* are proposed to be amended to implment the statutory requirement set forth in the 1990 Act which requires that the State ASCS Office make initial determinations concerning the provisions for this part for all farming operations consisting of more than 5 persons.

Title II of the 1990 Act provides for a Wool and Mohair price support program for the 1991–1995 marketing years. Provisions in this title require that the Secretary issue regulations defining the term "person" and that the regulations be consistent with the regulations issued in accordance with sections 1001, 1001A, and 1001B of the Food Security Act of 1985 (7 U.S.C. 1308–1, and 1308–2). Accordingly, the provisions of 1497.1

and 1497.3 are proposed to be amended to facilitate the implementation of payment limitations for the Wool and Mohair Programs and to make minor adjustments to properly account for any livestock contributed to a farming operation. Specifically, in § 1497.3 the definition of the term "capital" is proposed to be amended to provide that the rental value of livestock provided by an individual or entity to the farming operation in order for such operation to conduct farming activities is considered to be "Capital" for purposes of determining whether a program participant is actively engaged in farming and a separate person for payment limitation purposes.

In order to clarify existing regulatory provisions which requires contributions of capital, land, or equipment which are leased from another individual or entity with an interest in the farming operation to be leased at a fair market value, the definitions of capital, land, and equipment, found at § 1497.3, are proposed to be amended.

The 1990 Act provides a definition for irrevocable trust which essentially codifies a definition provided in § 1497.3 prior to passage of the 1990 Act. The 1990 Act provides that an irrevocable trust (other than a trust established prior to January 1, 1987) must not allow for modification or termination of the trust by the grantor, allow for the grantor to have any future, contingent, or remainder interest in the corpus of the trust, or provide for the transfer to the corpus of the trust to the remainder beneficiary in less than 20 years from the date the trust is established except in cases where the transfer is contingent on the remainder beneficiary achieving at least the age of majority or is contingent on the death of the grantor or income beneficiary. The definition of irrevocable trust provided in § 1497.3 is proposed to be amended to reflect this change.

It is also proposed that the definition of the term "payment" which is set forth in § 1497.3 be amended to include payments made under the additional programs made subject to this part. Because the term is not used in this part, it is proposed that the definition of the term "related entity" be deleted from § 1497.3.

In order to facilitate consistent use of the rules set forth in 7 CFR part 1497 for all programs, § 1497.7, *Commensurate contributions,* is proposed to be added to require that in order to be eligible to receive payments under any program subject to this part an individual or entity must make contributions to the farming operation which are commensurate with the individual's or entity's claimed share of the profits or losses from the farming operation and that the contributions must be at risk.

The 1990 Act provided discretionary authority to the Secretary to allow a husband and wife to be considered separate persons in certain cases. In order to implement this provision, § 1497.104, *Husband and Wife,* is proposed to be amended to enable spouses to receive farm program payments in the same amounts available to two unmarried individuals when each spouse is otherwise eligible to receive payments as a separate person and neither spouse receives farm program payments directly or indirectly through any other entity. Because the 1990 Act provides that payments under the honey price support program which are made to an entity are to be attributed to the members of the entity, this section further provides that, for the honey program only, a husband and wife may receive honey payments indirectly through any number of entities and still be considered separate persons if otherwise eligible.

As provided above the 1990 Act specifically provides for direct attribution for payment limitation purposes and loan forfeiture purposes with respect to honey. In order to implement this provision § 1497.109, *Honey producers,* is proposed to be added to provide that payments to entities will continue to be subject to the maximum payment limitation amounts; however, individual honey producers who indirectly receive marketing loan gains on honey or forfeit honey through an entity will have such benefits attributed to the individual.

The 1990 Act also provides that the existence of a contract for hybrid seed production which a producer might have shall have no impact on such producer's actively engaged in farming determination. Section 1497.212 is proposed to be added to implement this provision.

Numerous other technical changes are made throughout this part in order to clarify existing provisions.

Because many of the definitions which apply to part 1497 also apply to part 1498 it is proposed that the definitions of active personal labor, capital, entity, land, and person be deleted from § 1498.3 and such section be amended by adding a statement referencing the definitions in § 1497.3.

In accordance with the proposed amendments of 7 CFR parts 1497 and 1498, the following determinations would be made:

Individual

Example 1. Individual Z, a wool producer, grazes sheep on owned land. Individual Z also owns the shearing equipment, contributes at least 50 percent of Z's commensurate share of active personal labor, and contributes 100 percent of the farming operation's management. In this situation, Individual Z's share of the profits or losses from the farming operation are commensurate with Individual Z's contributions to the farming operation and the contributions are at risk.

Determination. Individual Z is considered to be actively engaged in farming under the general provisions.

Example 2. Individual I, a wool producer, grazes sheep on land that is gifted to Individual I by the Indian Tribal Venture. Individual I owns livestock and the shearing equipment and contributes at least 50 percent of the producer's commensurate share of active personal labor and contributes 100 percent of the active personal management to the farming operation. In this situation, Individual I's share of the profits or losses from the farming operation are commensurate with Individual I's contributions to the farming operation and the contributions are at risk.

Determination. Individual I is considered to be actively engaged in farming under the general provisions.

Example 3. Individual H, a minor who is a wool producer, raises a sheep and produces the wool from the sheep as a 4–H project. The sheep has been gifted to Individual H by Q, and gift tax, as applicable has been paid. Individual H owns no equipment or land but instead uses Q's at no charge. Individual H contributes at least 50 percent of the producer's commensurate share of active personal labor and contributes 100 percent of the active personal management to the farming operation. In this situation, Individual H's share of the profits or losses from the farming operation are commensurate with Individual H's contributions to the farming operation and the contributions are at risk. Q is H's father and H lives in Q's house.

Determination. Individual H is considered to be actively engaged in farming under the general provisions and is combined as one "person" for payment limitation purposes with Individual H's parents.

Joint Operation

Example 1. Joint Venture X consists of 2 members who are Member N and Member M. Each of the members claim

a 50 percent share of the joint venture. Member N provides a significant amount of capital through the contribution of sheep to the farming operation, owned pasture land, a significant amount of owned equipment used for production of wool and mohair, and a significant amount of Active Personal management. Member M contributes sheep to the farming operation, the value of which provides a significant contribution of capital and provides 100 percent of the labor used in the joint venture. Member M informed the county ASC committee that Member N had provided a non interest bearing loan to Member M, so that Member M could purchase the sheep. In this situation, Member N's and Member M's share of the profits or losses from the farming operation are commensurate with their contributions to the farming operation and the contributions are at risk.

Determination. Member N is considered actively engaged in farming because of N's significant contributions of capital, land, equipment, and active personal management and because N's claimed shares of the joint venture are at lease commensurate with N's contributions and are at risk. The loan which member N made to member M was not at the prevailing interest rate and was, therefore, not a contribution by member M. Member M is not actively engaged in farming because Member M did not provide a significant contribution of capital, land or equipment.

Husband and Wife

Example 1. Husband A and Wife B have an individual farming operation comprised of 500 acres of owned land. In addition, Wife B has 25 percent interest in Corporation X, which is participating in the Conservation Reserve Program and earning annual payments. Husband A and Wife B jointly own all the equipment and provide all the capital. Husband A contributes at least 50 percent of A's commensurate share of active personal labor and contributes a significant contribution of active personal management. Wife B provides a significant contribution of active personal management. In this situation, Husband A's and Wife B's share of the profits or losses from the farming operation are commensurate with their contributions to the farming operation and the contributions are at risk.

Determination. Husband A and Wife B are considered to be actively engaged in farming. However, Husband A and Wife B are considered one "person" for payment limitation purposes because they receive payments indirectly through Corporation X.

Example 2. Husband X and Wife Y have an individual farming operation comprised of 500 acres of owned land. In addition, Husband X and Wife Y have combined interest of 33 percent in Corporation Z, which produces vegetables and does not earn USDA benefits. Husband X and Wife Y jointly own all the equipment and provide all the capital on the individual farming operation. Husband X contributes at least 50 percent of X's commensurate share of active personal labor and contributes a significant contribution of active personal management. Wife Y provides a significant contribution of active personal management. In this situation, Husband X's and Wife Y's share of the profits or losses from the farming operation are commensurate with their contributions to the farming operation and the contributions are at risk.

Determination. Husband X and Wife Y are considered to be actively engaged in farming and separate "persons" for payment limitation purposes.

Honey Producers

Example 1. In 1991, Zee Honey, Inc. produces enough honey to receive $300,000 in loan deficiency payments. Zee has two 50 percent stockholders, A and B. A also produces enough honey as an individual to receive $250,000 in loan deficiency payments. B has no other honey interests. Zee's contributions to its farming operation are commensurate with it's share of the profits and losses and are at risk. A's contributions to her farming operation are commensurate with her share of the profits and losses and are at risk. Neither Zee nor A or B are combined as one person with any other individual or entity.

Determination. In 1991 each person is limited to $200,000 in loan deficiency payments. $100,000 of Zee's payment would be denied since it exceeds the statutory limitation of $200,000. Of the remaining $200,000 earned by Zee, $100,000 is attributed to A and $100,000 is attributed to B. Therefore $150,000 of A's individual payment is also denied.

List of Subjects

7 CFR Part 1497

Price Support Programs.

7 CFR Part 1498

Aliens, Loan programs—agriculture, Grant programs—agriculture.

Accordingly, 7 CFR Chapter XIV is amended as follows:

1. Part 1497 is revised to read as follows:

PART 1497—PAYMENT LIMITATION

Subpart A—General Provisions

Sec.
1497.1 Applicability.
1497.2 Administration.
1497.3 Definitions.
1497.4 Timing for determining status of persons.
1497.5 Indian tribal ventures.
1497.6 Scheme or device.
1497.7 Commensurate contributions.
1497.8 Joint and several liability.
1497.9 Equitable adjustments.
1497.10 Appeals.
1497.11 Paperwork Reduction Act assigned number.

Subpart B—Person Determinations

1497.101 Limited partnerships, corporations and other similar entities.
1497.102 Trusts.
1497.103 Estates.
1497.104 Husband and wife.
1497.105 Minor children.
1497.106 States, political subdivisions, and agencies thereof.
1497.107 Charitable organizations.
1497.108 Changes in farming operations.
1497.109 Honey producers.

Subpart C—Actively Engaged in Farming Determinations

1497.201 General provisions for determining whether an individual or entity is actively engaged in farming.
1497.202 Individuals.
1497.203 Joint operations.
1497.204 Limited partnerships, corporations and other similar entities.
1497.205 Trusts.
1497.206 Estates.
1497.207 Landowners.
1497.208 Family members.
1497.209 Sharecroppers.
1497.210 Incapacitated individuals.
1497.211 Persons not considered to be actively engaged in farming.
1497.212 Hybrid seed producers.

Subpart D—Permitted Entities

1497.301 Limitation on the number of entities through which an individual or entity may receive a payment and required notification.

Subpart E—Cash Rent Tenants

1497.401 Cash rent tenants.

Authority: 17 U.S.C. 1308, 1308–1 and 1308–2; 16 U.S.C. 3834.

Subpart A—General Provisions

§ 1497.1 Applicability

(a) All of the provisions of this part are applicable to the following programs and any other programs as may be provided for in individual program regulations:

(1) The annual price support and production adjustment programs for the 1989 and subsequent crops of wheat, feed grains, upland cotton, extra long staple cotton, rice, and oilseeds;

(2) Any program authorized by the Agricultural Act of 1949 under which a gain is realized by the repayment of a loan for a crop of any commodity (other than honey) at a level lower than the original loan level;

(3) The Wool and Mohair Price Support Programs authorized by the National Wool Act of 1954;

(4) The Conservation Reserve Program authorized by subchapter B of chapter 1 of subtitle D of Title XII of the Food Security Act of 1985;

(i) This part is applicable to rental payments made in accordance with a Conservation Reserve Program contract entered into on or after August 1, 1988. For Conservation Reserve Program contracts entered into before August 1, 1988, the person may elect to have the provisions of this part apply to such a contract by notifying the county committee in writing of such election. Such election shall be irrevocable.

(ii) The regulations set forth at part 795 of this title shall be applicable to Conservation Reserve Program contracs entered into prior to December 22, 1987, and to Conservation Reserve Program contracts entered into on or after such date and before August 1, 1988, if the person has not made the election specified in paragraph (a)(4)(i) of this section.

(iii) This part is not applicable to rental payments made in accordance with a Conservation Reserve Program contract if such payments are made to a State, political subdivision, or agency thereof in connection with agreements entered into under a special conservation reserve enhancement program carried out by such State, political subdivision, or agency thereof that has been approved by the Secretary, or a designee of the Secretary.

(iv) With respect to inherited land, this part is not applicable to rental payments made in accordance with a Conservation Reserve Program contract if such payments are made to an individual heir who has succeeded to such contract. Such land must have been subject to the Conservation Reserve Program contract at the time it was inherited by the individual.

(b) The provisions in subparts A and B are the only subparts applicable to the following programs; other programs may be subject to these subparts for in individual program regulations;

(1) Any program authorized by the Agricultural Act of 1949 for a crop of honey under which a gain is realized by the repayment of a loan at a level lower than the original loan level or a loan deficiency payment is made, and any loan forfeiture limitation provisions set forth in such act;

(2) The Agricultural Conservation Program authorized under the Soil Conservation and Domestic Allotment Act;

(3) The Forestry Incentives Program;

(4) The Wetlands Reserve Program authorized by subchapter C of chapter 1 of subtitle D of Title XII of the Food Security Act of 1985;

(5) The Agricultural Water Quality Incentives Program authorized by chapter 2 of subtitle D of Title XII of the Food Security Act of 1985;

(6) The Livestock Feed Program authorized by the Agricultural Act of 1949.

(c) This part shall be applied to the programs specified in paragraphs (a) (1) and (2) and (b) (1) and (6) of this section on a crop year basis; with respect to the program specified in paragraph (a)(3) of this section on a marketing year basis; and with respect to the programs specified in paragraphs (a)(4) and (b)(2) through (5) of this section on a fiscal year basis.

(d) This part shall be used to determine whether certain individuals or legal entities are to be treated as one person or as separate persons for the purpose of applying the payment limitation provisions which are applicable to the programs specified in this section and to any other programs as may be provided for in individual program regulations.

(e) In cases in which more than one provision of this part are applicable, the provision which is most restrictive shall apply.

(f) Payments made to public schools with respect to land which is owned by a public school district and payments made to a State with respect to land owned by a State which is used to maintain a public school shall not be subject to the payment limitations.

(g) The following amounts are the limitation on payments per person per applicable period for each payment or combination of payments specified.

Payment type	Limitation				
	1991	1992	1993	1994	1995
● Deficiency	$50,000	$50,000	$50,000	$50,000	$50,000
● Diversion					
● Marketing loan gain	75,000	75,000	75,000	75,000	75,000
● Findley					
● Loan deficiency					
● Deficiency	250,000	250,000	250,000	250,000	250,000
● Diversion					
● Resource adjustment					
● Disaster					
● Marketing loan gain					
● Findley					
● Loan deficiency					
● Inventory reduction					
● Wool	200,000	175,000	150,000	125,000	125,000
● Mohair	200,000	175,000	150,000	125,000	125,000
● CRP	50,000	50,000	50,000	50,000	50,000
● Honey marketing loan gain	200,000	175,000	150,000	125,000	125,000
● Honey loan deficiency					
● Honey loan forfeiture	200,000	175,000	150,000	125,000	125,000
● ACP cost share	3,500	3,500	3,500	3,500	3,500
● FIP cost share	10,000	10,000	10,000	10,000	10,000
● WRP	50,000	50,000	50,000	50,000	50,000
● AWQIP incentive payments	3,500	3,500	3,500	3,500	3,500
● AWQIP cost share	1,500	1,500	1,500	1,500	1,500
*Note: This limitation is on a per contract basis rather than a per person basis.					
● LFP cost share	50,000	50,000	50,000	50,000	50,000

Payment type	Limitation				
	1991	1992	1993	1994	1995
● LFP gain					

§ 1497.2 Administration

(a) The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, CCC, and the Administrator, ASCS. In the field, the regulations in this part will be administered by the Agricultural Stablilization and Conservation State and county committees (herein referred to as "State and county committees", respectively).

(b) State executive directors, country executive directors and State and county committees do not have authority to modify or waive any of the provisions of this part.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee which has not been taken by such committee. The State committee may also:

(1) Correct or require a county committee to correct any action taken by such county committee which is not in accordance with this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with this part.

(d) No delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, and the Administrator, ASCS, or a designee, from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

(e) The initial "actively engaged in farming" and "person" determinations shall be made within 60 days after the producer files the required forms and any other supporting documentation needed in making such determinations. If the determination is not made within 60 days, the producer will receive a determination for that program year which reflects the determination sought by the producer unless the Deputy Administrator determines that the producer did not follow the farm operating plan which was presented to the county or State committee for such year.

(f)(1) Initial determinations concerning the provisions of this part shall not be made by a county ASCS office with respect to any farm operating plan that is for a:

(i) Joint operation with more than 5 members;

(ii) Farm, as defined in 7 CFR part 719, on which more than 5 persons earn program payments specified in § 1497.1 and where expected total payments on the farm exceed $50,000.

(2) Additional criteria for determining plans covered by this paragraph may include, as deemed relevant and accessible, any of the following:

(i) The recent addition of a new person;

(ii) A recent farm reconstitution or reorganization;

(iii) A small proportion of financially fixed farm assets; or

(iv) Any other criteria deemed appropriate by the Deputy Administrator.

(3) Priority will be given to operations with payments exceeding $40,000 in payments.

(g) Data furnished by the producers will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without it program benefits will not be provided.

§ 1497.3 Definitions.

(a) The terms defined in part 719 of this chapter shall be applicable to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions shall be applicable to this part:

Active personal labor. Active personal labor is personally providing physical activities necessary in a farming operation, including activities involved in land preparation, planting, cultivating, harvesting, and marketing of agricultural commodities in the farming operation. Other physical activities include those physical activities required to establish and maintain conserving cover crops or conserving use acreages and those physical activities necessary in livestock operations.

Active personal management. Active personal management is personally providing:

(1) The general supervision and direction of activities and labor involved in the farming operation; or

(2) Services (whether performed on-site or off-site) reasonably related and necessary to the farming operation including any of the following:

(i) Supervision of activities necessary in the farming operation, including activities involved in land preparation, planting, cultivating, harvesting, and marketing of agricultural commodities, as well as activities required to establish and maintain conserving cover crops or conserving use acreage and activities required in livestock operations.

(ii) Business-related actions which include discretionary decision-making;

(iii) Evaluation of the financial condition and needs of the farming operation;

(iv) Assistance in the structuring or preparation of financial reports or analyses for the farming operation;

(v) Consultations in or structuring of business-related financing arrangements for the farming operation;

(vi) Marketing and promotion of agricultural commodities produced by the farming operation;

(vii) Acquiring technical information used in the farming operation; or

(viii) Any other management function reasonably necessary to conduct the farming operation and for which service the farming operation would ordinarily be charged a fee.

Capital. Capital consists of the funding and the rental value of livestock provided by an individual or entity to the farming operation in order for such operation to conduct farming activities. In determining whether an individual or entity has contributed capital, in the form of funding, to the farming operation, such capital must have been derived from a fund or account separate and distinct from that of any other individual or entity involved in such operation. Capital does not include the value of any labor or management which is contributed to the farming operation. A capital contribution may be a direct out-of-pocket input of a specified sum or an amount borrowed by the individual or entity.

(1) With respect to a farming operation conducted by an individual, a joint operation in which the capital is contributed by a member of the joint operation or an entity, such capital contributed to meet the requirements of:

(i) Section 1497.201(b) must be contributed directly by the individual or entity and must not be acquired as a result of a loan made to, guaranteed, or secured by:

(A) Any other individual, joint operation, or entity that has an interest in such farming operation.

(B) Such individual, joint operation, or entity by any other individual, joint operation, or entity which has an interest in such farming operation.

(C) Any other individual, joint operation, or entity in whose farming operation such individual, joint operation, or entity has an interest.

(ii) Section 1497.201(d) and§ 1497.7 must be contributed directly by the individual or entity and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, joint operations, or entities provided in paragraphs (1)(i)(A) through (1)(i)(C) of this definition, the loan must bear the prevailing interest rate.

(2) With respect to a farming operation conducted by a joint operation in which the capital is contributed by such joint operation such capital contributed to meet the requirements of:

(i) Section 1497.201(b) must be contributed directly by the joint operation and must not be acquired as a result of a loan made to, guaranteed, or secured by:

(A) Any individual, entity, or other joint operation which has an interest in such farming operation, including either joint operation's members.

(B) Such joint operation by any individual, entity, or other joint operation which has an interest in such farming operation.

(C) Any individual, entity, or other joint operation in whose farming operation such joint operation has an interest.

(ii) Section 1497.201(d) and § 1497.7 must be contributed directly by the joint operation and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, entities, or joint operations provided in paragraphs (2)(i)(A) through (2)(i)(C) of this definition, the loan must bear the prevailing interest rate.

(3) Livestock may be leased from any source. If livestock are leased from another individual or entity with an interest in the farming operation, the livestock must be leased at a fair market value.

Entity. An entity is a corporation, joint stock company, association, limited partnership, irrevocable trust, revocable trust, estate, charitable organization, or other similar organization including any such organization participation in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar organization.

Equipment. Equipment is the machinery and implements needed by the farming operation to conduct activities of the farming operation including machinery and implements involved in land preparation, planting, cultivating, harvesting, or marketing of the crops involved. Equipment also includes machinery and implements needed to establish and maintain conservation cover crops or conservation use acreages and those needed to conduct livestock operations.

(1) With respect to a farming operation conducted by an individual, a joint operation in which the equipment is contributed by a member of the joint operation or entity, such equipment contributed to meet the requirements of:

(i) Section 1497.201(b) must be contributed directly by the individual or entity and must not be acquired as a result of a loan made to, guaranteed, or secured by:

(A) Any other individual, joint operation, or entity that has an interest in such farming operation.

(B) Such individual, joint operation, or entity by any other individual, joint operation, or entity which has an interest in such farming operation.

(C) Any other individual, joint operation, or entity in whose farming operation such individual, joint operation, or entity has an interest.

(ii) Section 1497.201(d) and § 1497.7 must be contributed directly by the individual or entity and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, joint operations, or entities provided in paragraphs (1)(i)(A) through (1)(i)(C) of this definition, the loan must bear the prevailing interest rate.

(2) With respect to a farming operation conducted by a joint operation in which the equipment is contributed by such joint operation, such equipment contributed to meet the requirements of:

(i) Section 1497.201(b) must be contributed directly by the joint operation and must not be acquired as a result of a loan made to, guaranteed, or secured by:

(A) Any individual, entity, or other joint operation which has an interest in such farming operation, including either joint operation's members.

(B) Such joint operation by any individual, entity, or other joint operation which has an interest in such farming operation.

(C) Any individual, entity, or other joint operation in whose farming operation such joint operation has an interest.

(ii) Section 1497.30(d) and 1497.15 must be contributed directly by the joint operation and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, entities, or joint operations provided in paragraphs (2)(i)(A) through (2)(i)(C) of this definition, the loan must bear the prevailing interest rate.

(3) Such equipment may be leased from any source. If such equipment is leased from another individual or entity with an interest in the farming operation, such equipment must be leased at a fair market value.

Family Member. The term family member means an individual to whom another member in the farming operation is related as lineal ancestor, lineal descendent, or sibling, including spouses of those family members who do not make a significant contribution to the farming operation themselves.

Farming operation. A farming operation is a business enterprise engaged in the production of agricultural products which is operated by an individual, entity, or joint operation which is eligible to receive payments, directly or indirectly, under one or more of the programs specified in § 1497.1. An entity or individual may have more than one farming operation if such individual or entity is a member of one or more joint operations.

Irrevocable trust. All trusts shall be considered to be revocable trusts, except a trust may be considered to be an irrevocable trust if it is a trust which:

(1) May not be modified or terminated by the grantor;

(2) The grantor does not have any future, contingent or remainder interest in the corpus of the trust; and

(3) For trusts established after January 1, 1987, does not provide for the transfer of the corpus of the trust to the remainder beneficiary in less than 20 years from the date the trust is established except in cases where the transfer is contingent upon the remainder beneficiary achieving at least the age of majority or is contingent upon the death of the grantor or income beneficiary.

Joint operation. A joint operation is a general partnership, joint venture, or other similar business organization.

Land. Land is farmland consisting of cropland, pastureland, wetland, or rangeland which meets the specific requirements of the applicable program.

(1) With respect to a farming operation conducted by an individual, a joint operation in which the land is contributed by a member of the joint operation, or entity, such land contributed to meet the requirements of:

(i) Section 1497.201(b) must be contributed directly by the individual or entity and must not be acquired as a result of a loan made to, guaranteed, or secured by:

(A) Any other individual, joint operation, or entity that has an interest in such farming operation.

(B) Such individual, joint operation, or entity by any other individual, joint operation, or entity which has an interest in such farming operation.

(C) Any other individual, joint operation, or entity in whose farming operation such individual, joint operation, or entity has an interest.

(ii) Section 1497.201(d) and § 1497.7 must be contributed directly by the individual or entity and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, joint operations, or entities provided in paragraphs (1)(i)(A) through (1)(i)(C) of this definition, the loan must bear the prevailing interest rate.

(2) With respect to a farming operation conducted by a joint operation in which the land is contributed by such joint operation such land contributed to meet the requirements of:

(i) Section 1497.201(b) must be contributed directly by the joint operation and must not be acquired as a result of a loan made to, guaranteed, or secured by:

(A) Any individual, entity, or other joint operation which has an interest in such farming operation, including either joint operation's members.

(B) Such joint operation by any individual, entity, or other joint operation which has an interest in such farming, operation.

(C) Any individual, entity, or other joint operation in whose farming operation such joint operation has an interest.

(ii) Section 1497.201(d) and § 1497.7 must be contributed directly by the joint operation and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, entities, or joint operations provided in items (2)(i)(A) through (2)(i)(C) of this definition, the loan must bear the prevailing interest rate.

(3) Such land may be leased from any source. If such land is leased from another individual or entity with an interest in the farming operation, such land must be leased at a fair market value.

Payment. A payment includes:

(1) With respect to the programs specified in Section 1497.1(a) (1) and (2):

(i) Deficiency payments;

(ii) Land Diversion payments;

(iii) Resource adjustment payment which is any part of any payment that is determined by the Deputy Administrator to represent compensation for resource adjustment (excluding land diversion payments) or public access for recreation;

(iv) Disaster payment which is any disaster payment made under one or more of the annual programs established for a crop of wheat, feed grains, cotton, rice, and oilseeds under the Agricultural Act of 1949;

(v) Marketing loan gain which is any gain realized by a producer from repaying a loan for a crop of any commodity (other than honey) at a lower level than the original loan level established under the Agricultural Act of 1949;

(vi) Findley payment which is any deficiency payment received for a crop of wheat or feed grains under section 107B(c)(1) or 105B(c)(1), respectively, of the Agricultural Act of 1949 as the result of a reduction of the loan level for such crop under section 107B(a)(3) or 105B(a)(3) of the Agricultural Act of 1949;

(vii) Loan deficiency payment which is any loan deficiency payment received for a crop of wheat, feed grains, upland cotton, rice, or oilseeds, under section 107B(b), 105B(b), 103B(b), 101B(b), or 205(e), respectively, of the Agricultural Act of 1949;

(viii) Inventory reduction payment which is any inventory reduction payment received for a crop of wheat, feed grains, upland cotton, or rice under section 107B(f), 105B(f), 103B(f), or 101B(f), respectively, of the Agricultural Act of 1949;

(2) With respect to the Wool and Mohair Programs:

(i) Annual wool payments; and

(ii) Annual mohair payments.

(3) With respect to the Conservation Reserve Program, annual rental payments;

(4)(i) With respect to any program authorized by the Agricultural Act of 1949 for a crop of honey under which a gain is realized by the repayment of a loan at a level lower than the original loan level or a loan deficiency payment is made:

(A) The honey marketing loan gain which is the amount of the gain; and

(B) The honey loan deficiency payment which is amount of the loan deficiency payment; and

(ii) With respect to any loan forfeiture limitation provision of such act, the value of the loan forfeiture.

(5) With respect to the Agricultural Conservation Program, the cost share payment;

(6) With respect to the Forestry Incentives Program, the cost share payment;

(7) With respect to the Wetlands Reserve Program, annual easement payments;

(8) With respect to the Agricultural Water Quality Incentives Program;

(i) Annual incentive payments; and

(ii) Cost share payments;

(9) With respect to the Livestock Feed Program:

(i) LFP cost share which is any cost share payment; and

(ii) LFP gain which is any gain realized as a result of a producer buying or receiving Commodity Credit Corporation inventory at a level lower than the market price; and

(10) With respect to other programs as designated in individual program regulations, any payments designated in such regulations.

Permitted Entity. A permitted entity is an entity designated annually by an individual which is to receive a payment, loan, or benefit under a program specified in § 1497.1(a).

Person. (1) A person is:

(i) An individual, including any individual participating in a farming operation as a partner in a general partnership, a participant in a joint venture, or a participant in a similar entity;

(ii) A corporation, joint stock company, association, limited partnership, irrevocable trust, revocable trust together with the grantor of the trust, estate, or charitable organization, including any such entity or organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar entity; and

(iii) A State, political subdivision, or agency thereof.

(2) In order for an individual or entity other than an individual or entity who is a member of a joint operation to be considered a separate person for the purposes of this part, in addition to other provisions of this part, the individual or entity must:

(i) Have a separate and distinct interest in the land or the crop involved;

(ii) Exercise separate responsibility for such interest; and

(iii) Maintain funds or accounts separate from that of any other individual or entity for such interest.

(3) With respect to an indvidual or entity who is a member of a joint operation, such individual or entity will have met the requirements of paragraph (2) of this definition if the joint operation meets the requirements of such paragraph.

(4) Any cooperative association of producers that markets commodities for producers with respect to the commodities so marketed for producers shall not be considered to be a person

Public School. A public school is a primary, elementary, secondary school, college, or university which is directly administered under the authority of a governmental body or which receives a predominant amount of its financing from public funds.

Sharecropper. An individual who performs work in connection with the production of the crop under the supervision of the operator and who receives a share of such crop in return for the provisions of such labor.

Significant Contribution. A significant contribution is the provision of the following to a farming operation by an indvidual or entity:

(1)(i) With respect to land, capital, or equipment contributed by an individual or entity, a contribution which has a value which is equal to at least 50 percent of the individual's or entity's commensurate share of:

(A) The total value of the capital necessary to conduct the farming operation;

(B) The total rental value of the land necessary to conduct the farming operation;

(C) The total value of the equipment necessary to conduct the farming operation; or

(ii) If the contribution by an individual or entity consists of any combination of land, capital, and equipment, such combined contribution must have a value which is equal to 30 percent of the individual's or entity's commensurate share of the total value of the farming operation;

(2) With respect to active personal labor, an amount which is the smaller of:

(i) 1,000 hours per calendar year; or

(ii) 50 percent of the total hours which would be required to conduct a farming operation which is comparable in size to such individual's or entity's commensurate share in the farming operation;

(3) With respect to active personal management, activities which are critical to the profitability of the farming operations, taking into consideration the individual's or entity's commensurate share in the farming operation; and

(4) With respect to a combination of active personal labor and active personal management, when neither contribution meets the requirements of paragraphs (2) and (3) of this definition, a combination of active personal labor and active personal management when viewed together which results in a critical impact on the profitability of the farming operation in an amount at least equal to either the significantly contribution of active personal labor and active management as provided in paragraphs (2) and (3) of this definition.

Substantial Beneficial Interest. A substantial beneficial interest in any entity is an interest of 10 percent or more. In determining whether such an interest equals at least 10 percent, all interests in the entity which are owned by an individual or entity directly or indirectly through such means as ownership of a corporation which owns the entity shall be taken into consideration. In order to ensure that the provisions of this part are not circumvented by an individual or entity, the Deputy Administrator may determine that an ownership interest requirement of less than 10 percent shall be applied to such individual or entity.

Total Value of the Farming Operation. The total value of the farming operation is the total of the costs, excluding the value of active personal labor and active personal management which is contributed by a person who is a member of the farming operation, needed to carry out the farming operation for the year for which the determination is made.

§ 1497.4 Timing for determining status of persons.

(a) Except as otherwise set forth in this part, the status of an individual or entity on April 1 of the current year, or such other date as may be determined and announced by the Deputy Administrator, shall be the basis on which determinations are made in accordance with this part for the year in which the determination is made.

(b) Actions taken by an individual or entity after April 1, or such other date as may be determined and announced by the Deputy Administrator, but on or before the final harvest date of the last program crop in the area, as determined by the Deputy Administrator, shall not be used to determine whether there has been an increase in the number of persons for the current year. Actions taken by a person after April 1, or such other date as may be determined and announced by the Deputy Administrator, but on or before the harvest of the last program crop in the area, shall be used to determine whether there has been a decrease in the number of persons for the current year.

§ 1497.5 Indian tribal ventures.

Individual Americans Indians which receive payments through other than an Indian tribal venture are required to certify that they will not accrue total payments, including payments made to the Indian tribal venture and to the individual American Indian, in excess of the applicable payment limitation for programs specified in § 1497.1.

§ 14976. Scheme or device.

(a) All or any part of the payment otherwise due a person on all farms in which the person has an interest may be withheld or be required to be refunded if the person adopts or participates in adopting a scheme or device which is designed to evade this part or which has the effect of evading this part. Such acts shall include, but are not limited to:

(1) Concealing information which affects the application of this part;

(2) Submitting false or erroneous information; or

(3) Creating fictitious entities for the purpose of concealing the interest of a person in a farming operation.

(b) If the Deputy Administrator determines that any person has adopted a scheme or device to evade, or that has the purpose of evading, the provisions of section 1001, 1001A, or 1001C of the Food Security Act of 1985 such person shall be ineligible to receive payments under the programs specified in § 1497.1 with respect to the year for which such scheme or device was adopted and the succeeding year.

§ 1497.7 Commensurate contributions.

In order to be considered eligible to receive payments under the programs specified in § 1497.1 an individual or entity specified in § § 1497.202 through 1497.210 must have:

(a) A share of the profits or losses from the farming operation which is commensurate with the individual's or entity's contribution to the operation; and

(b) Contributions to the farming operation which are at risk.

§ 1497.8 Joint and several liability.

If two or more individuals or entities are considered to be one person and the total payment received is in excess of the applicable payment limitation provision, such individuals or entities shall be jointly and severally liable for any liability which arises therefrom. The provisions of this section shall be applicable in addition to any liability which arises under a criminal or civil statute.

§ 1497.9 Equitable adjustments.

Actions taken by an individual or an entity in good faith on action or advice of an authorized representative of the Deputy Administrator may be accepted as meeting the requirements of this part to the extent the Deputy Administrator deems necessary in order to provide fair and equitable treatment to such individual or entity.

§ 1497.10 Appeals.

(a) Any person may obtain reconsideration and review of determinations made under this part in accordance with the appeal regulations set forth at part 780 of this title. With respect to such appeals, the applicable reviewing authority shall:

(1) Schedule a hearing with respect to the appeal within 45 days following receipt of the written appeal; and

(2) Issue a determination within 60 days following the hearing.

(b) The time limitations provided in paragraph (a) of this section shall not apply if:

(1) The appellant, or the appellant's representative, requests a postponement of the scheduled hearing;

(2) The appellant, or the appellant's representative, requests additional time following the hearing to present additional information or a written closing statement;

(3) The appellant has not timely presented information to the reviewing authority; or

(4) Any investigation by the Office of Inspector General is ongoing or a court proceeding is involved which affects the amounts of payments a person may receive.

(c) If the deadlines provided in paragraphs (a) and (b) of this section are not met, the relief sought by the producer's appeal will be granted for the applicable crop year unless the Deputy Administrator determines that the producer did not follow the farm operating plan which was presented initially to the county committee for the year which is the subject of the appeal.

(d) An appellant may waive the provisions of paragraphs (a) and (b) of this section.

§ 1497.11 Paperwork Reduction Act assigned number.

The information requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0560–0096. Public reporting burden for these collections is estimated to vary from 30 minutes to 16 hours per response including time for reviewing instructions, scheduling existing sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0560–0096), Washington, DC 20503.

Subpart B—Person Determinations

§ 1497.101 Limited partnerships, corporations and other similar entities.

(a) A limited partnership, corporation, or other similar entity shall be considered to be a person separate from an individual partner, stockholder, or member except that a limited partnership, corporation, or other similar entity in which more than 50 percent of the interest in such limited partnership, corporation, or other similar entity is owned by an individual (including the interest owned by the individual's spouse, minor children, and trusts for the benefit of such minor children) or by an entity shall not be considered as a separate person from such individual or entity.

(b) If the same two or more individuals or entities own more than 50 percent of the interest in each of two or more limited partnerships, corporations, or other similar entities engaged in farming, all such limited partnerships, corporations, or other similar entities shall be considered to be one person.

(c) The percentage share of the interest in a limited partnership, corporation, or other similar entity which is owned by an individual or other entity shall be determined as of April 1, or such other date as may be determined and announced by the Deputy Administrator. If a partner, stockholder, or member acquires an interest in the limited partnership, corporation, or other similar entity after such date, and on or before the harvest of the last program crop in the area as determined by the Deputy Administrator, the amount of any such interest shall be included in determining the total ownership interest of such partner, stockholder, or member.

(d) Where there is only one class of stock or other similar unit of ownership, an individual's or entity's percentage share of the limited partnership, corporation, or other similar entity shall be based upon the outstanding shares of stock or other similar unit of ownership held by the individual or entity and compared to the total outstanding shares of stock or other similar unit of ownership. If the limited partnership, corporation, or other similar entity has more than one class of stock or other unit of ownership, the percentage share of the limited partnership, corporation, or other similar entity owned by an individual or entity shall be determined by the Deputy Administrator on the basis of market quotations. If market quotations are lacking or are too scarce to be recognized, such percentage share shall be determined by the Deputy Administrator on the basis of all relevant factors affecting the fair market value of such stock or other unit of ownership, including the various rights and privileges which are attributed to each such class.

§ 1497.102 Trusts.

(a) A trust shall be considered to be a person separate from the individual income beneficiaries of the trust except that a trust which has a sole income beneficiary shall not be considered to be a separate person from such income beneficiary.

(b) Where two or more irrevocable trusts have common income beneficiaries (including a spouse and minor children) with more than a 50 percent interest, all such trusts shall be considered to be one person.

(c) A revocable trust and the grantor of such revocable trust shall be considered to be one person.

§ 1497.103 Estates.

If the deceased individual would have been considered to be one person with respect to an heir, the estate shall also be considered to be one person with such heir.

§ 1497.104 Husband and wife.

With respect to any married couple, the husband and wife shall be considered to be one person except that a husband and wife, who:

(a) Prior to their marriage were separately engaged in unrelated farming operations, will be determined to be separate persons with respect to such farming operations so long as such operations remain separate and distinct from any farming operation conducted by the other spouse, or

(b) Except as provided in paragraph (c) of this section, do not hold, directly or indirectly, a substantial beneficial interest in more than one entity (including themselves) engaged in farm operations that also receive farm program payments, the spouses may be considered as separate persons if each spouse otherwise meets the requirements under this part to be considered a separate person and is otherwise eligible to receive payment.

(c) With respect to any payments received under any program authorized by the Agricultural Act of 1949 for a crop of honey under which a gain is realized by the repayment of a loan at a level lower than the original loan level or a loan deficiency payment is made, and with respect to any loan forfeiture

provision of such act a husband and wife may hold, directly or indirectly, a substantial beneficial interest in an unlimited number of entities engaged in farm operations that also receive such payments.

§ 1497.105 Minor children.

(a) Except as provided in paragraph (b) of this section, a minor, including a minor who is the beneficiary of a trust or who is an heir of an estate, and the parent or any court-appointed person such as a guardian or conservator who is responsible for the minor shall be considered to be one person.

(b) A minor may be considered to be a separate person from the minor's parent or any court appointed person such as a guardian or conservator who is responsible for the minor if the minor is a producer on a farm and the minor's parent or any court appointed person such as a guardian or conservator who is responsible for the minor does not have any interest in the farm on which the minor is a producer or in any production from such farm. In addition it must be determined that the minor:

(1) Has established and maintains a separate household from the minor's parents or any court-appointed person such as a guardian or conservator who is responsible for the minor and such minor personally carries out the farming activities with respect to the minor's farming operation for which there is a separate accounting; or

(2) Does not live in the same household as such minor's parent and:

(i) Is represented by a court-appointed guardian or conservator who is responsible for the minor; and

(ii) Ownership of the farm is vested in the minor.

(c) A person shall be considered to be a minor until the age 18 is reached. Court proceedings conferring majority on a person under 18 years of age will not change such person's status as a minor.

§ 1497.106 States, political subdivisions, and agencies thereof.

A State, political subdivision and agencies thereof shall be considered to be one person.

§ 1497.107 Charitable organizations.

Charitable organizations, including a club, society, fraternal or religious organization, shall be considered to be a separate person to the extent that such an entity is engaged in the production of corps as a separate person, except where the land or the proceeds from the farming operation may transfer to an entity which exercises control or authority over such organization.

§ 1497.108 Changes in farming operations.

Any change in a farming operation that would increase the number of persons to which the provisions of this part apply must be bona fide and substantive. If bona fide, the following shall be considered to be substantive changes in the farming operation:

(a) The addition of a family member to a farming operation in accordance with § 1497.208, except that such an addition will not affect the status of any other individual or entity which is added to the farming operation.

(b) With respect to a landowner only, a change from a cash rent to a share rent.

(c) An increase through the acquisition of land not previously involved in the farming operation of approximately 20 percent or more in the total cropland involved in the farming operation if such cropland has crop acreage bases which are at least normal for the area.

(d) A change in ownership by sale or gift of a significant amount of equipment from an individual or entity who previously has been engaged in a farming operation to an individual or entity who has not been involved in such operation. The sale or gift of equipment will be considered to be bona fide and substantive only if the transferred amount of such equipment is commensurate with the new individual's or entity's share of the farming operation.

(e) A change in ownership by sale or gift of a significant amount of land from an individual or entity who previously has been engaged in a farming operation to an individual or entity who has not been involved in such operation. The sale or gift of land will be considered to be bona fide and substantive only if the transferred amount of such land is commensurate with the new individual's or entity's share of the farming operation.

(f) An increase through the acquisition of livestock not previously involved in the farming operation of approximately 20 percent or more in the total livestock involved in the farming operation.

(g) The Deputy Administrator may determine other bona fide changes to be substantive.

§ 1497.109 Honey producers.

(a) Any gain realized by an entity or individual from repaying a loan for a crop of honey at a lower level than the original loan level and any loan deficiency payment received, directly or indirectly, by an entity or individual under the program specified in § 1497.1(b)(1) shall be limited to the maximum payment limitation amount applicable to a crop as specified in § 1497.1(g). A payment made to an entity shall be attributed to each member of the entity in an amount determined by the Deputy Administrator, or a designee, to be representative of the percentage interest of the entity which is owned by such member.

(b) The total value of honey forfeited to CCC in satisfaction of a price support loan by an entity or individual shall be limited to the maximum amount applicable to a crop as specified in § 1497.1(g). A forfeiture by an entity shall be attributed to each member of the entity in an amount determined by the Deputy Administrator, or a designee, to be representative of the percentage interest of the entity which is owned by such member.

Subpart C—Actively Engaged in Farming Determinations

§ 1497.201 General provisions for determining whether an individual or entity is actively engaged in farming.

(a) To be considered a person who is eligible to receive payments with respect to a particular farming operation, a person must be an individual or entity actively engaged in farming with respect to such operation.

(b) Actively engaged in farming means, except as otherwise provided in this part, that the individual or entity, independently makes a significant contribution to a farming operation, of:

(1) Capital, equipment, or land, or a combination of capital, equipment, or land; and

(2) Active personal labor or active personal management, or a combination of active personal labor and active personal management.

(c) In determining if the individual or entity is actively contributing a significant amount of active personal labor or active personal management the following factors shall be taken into consideration:

(1) The types of crops and livestock produced by the farming operation;

(2) The normal and customary farming practices of the area; and

(3) The total amount of labor and management which is necessary for such a farming operation in the area.

(d) In order to be considered to be actively engaged in farming an individual or entity specified in §§ 1497.202 through 1497.210 must have:

(1) A share of the profits or losses from the farming operation which is commensurate with the individual's or entity's contribution to the operation; and

(2) Contributions to the farming operation which are at risk.

§ 1497.202 Individuals.

An individual shall be considered to be actively engaged in farming with respect to a farming operation if the individual makes a significant contribution of:

(a) Capital, equipment, or land, or a combination of capital, equipment, or land; and

(b) Active personal labor or active personal management, or a combination of active personal labor and active personal management.

§ 1497.203 Joint operations.

(a) A member shall be considered to be actively engaged in farming with respect to a farming operation if the member makes a significant contribution of:

(1) Capital, equipment, or land or a combination of capital, equipment, or land; and

(2) Active personal labor or active personal management or a combination of active personal labor and active personal management.

(b) If a joint operation separately makes a significant contribution of capital, equipment, or land, or a combination of capital, equipment, or land, and the joint operation meets the provisions of § 1497.201(d), the members of the joint operation who make a significant contribution of active personal labor, active personal management, or a combination of active personal labor and active personal management to the farming operation shall be considered to be actively engaged in farming with respect to such farming operation.

§ 1497.204 Limited partnerships, corporations and other similar entities.

A limited partnership, corporation, or other similar entity shall be considered to be actively engaged in farming with respect to a farming operation if:

(a) The entity separately makes a significant contribution to the farming operation of capital, equipment, or land, or a combination of capital, equipment, or land; and

(b) The partners, stockholders, or members collectively make a significant contribution, whether compensated or not compensated, of active personal labor, active personal management, or a combination of active personal labor and active personal management to the farming operation. The combined beneficial interest of all the partners, stockholders, or members providing active personal labor or active personal management, or a combination of active personal labor and active personal management must be at least 50 percent.

§ 1497.205 Trusts.

A trust shall be considered to be actively engaged in farming with respect to a farming operation if:

(a) The entity separately makes a significant contribution to the farming operation of capital, equipment, or land, or a combination of capital, equipment, or land; and

(b) The income beneficiaries collectively make a significant contribution of active personal labor or active personal management, or a combination of active personal labor and active personal management to the farming operation. The combined interest of all the income beneficiaries providing active personal labor or active personal management, or a combination of active personal labor and active personal management must be at least 50 percent; and

(c) The trust has provided a tax identification number of the trust and a copy of the trust agreement to the county committee.

§ 1497.206 Estates.

(a) For two program years after the program year in which an individual dies the individual's estate shall be considered to be actively engaged in farming if:

(1) The estate makes a significant contribution of either:

(i) Capital, equipment, or land; or

(ii) A combination of capital, equipment, or land; and

(2) The personal representative or heirs of the estate collectively make a significant contribution of either:

(i) Active personal labor or active personal management; or

(ii) A combination of active personal labor and active personal management.

(b) After the period set forth in paragraph (a) of this section, the deceased individual's estate shall not be considered to be actively engaged in farming unless, on a case by case basis, the Deputy Administrator determines that the estate has not been settled primarily for the purpose of obtaining program payments.

§ 1497.207 Landowners

A person who is a landowner, including landowners with an undivided interest in land, making, a significant contribution of owned land to the farming operation, shall be considered to be actively engaged in farming with respect to such owned land, if the landowner receives rent or income for such use of the land based on the land's production or the operation's operating results. A landowner also includes a member of a joint operation when the joint operation holds title to land in the name of the joint operation if the joint operation or its members submit adequate documentation to determine that, upon dissolution of the joint operation, the title to the land owned by the joint operation will revert to such a member of such joint operation.

1497.208 Family members.

With respect to a farming operation conducted by persons, a majority of whom are individuals who are family members, an adult family member who makes a significant contribution of active personal management, active personal labor, or a combination of active personal labor and active personal management shall be considered to be actively engaged in farming.

1497.209 Sharecroppers.

A sharecropper who makes a significant contribution of active personal labor to the farming operation shall be considered to be actively engaged in farming.

1497.210 Incapacitated individuals.

The determining authority shall take into consideration the circumstances involving individuals who have died or become incapacitated during the program year. If the individual dies or is incapacitated before a determination is made that the individual is "actively engaged in farming." the representative of the deceased individual's estate or the incapacitated individual, or other person if necessary, must provide the determining authority information that verifies that such individual did make a conscious effort to and would have been determined to be actively engaged in farming if not for the individual's death or incapacitation. If the individual dies or is incapacitated after being determined to be "actively engaged in farming," the determining authority shall allow such determination to be in effect for that program year. However, the following year such individual or the individual's estate must meet all necessary requirements in order to be determined to be "actively engaged in farming" for that year.

1497.211 Persons not considered to be actively engaged in farming.

An individual or entity who does not meet any of the provisions of §§ 1497.202 through 1497.210 and a landowner who rents land to a farming operation for cash or a crop share guaranteed as to the amount of the

commodity shall not be considered to be actively engaged in farming.

1497.212 Hybrid seed producers.

The existence of a hybrid seed contract for a producer shall not be taken into account when making an actively engaged in farming determination with respect to such producer. However, all other provisions of this part must be met by such producer.

Subpart D—Permitted Entities

1497.301 Limitation on the number of entities through which an individual or entity may receive a payment and required notification.

(a) An individual shall receive a payment under a program specified in § 1497.1(a) either directly or indirectly from no more than three permitted entities. An individual which receives such a payment shall notify the county committee in the county in which such individual maintains a farming operation whether or not the farming operation is to be considered a permitted entity. An individual shall only receive such payments as a result of a farming operation conducted by:

(1) The individual and by no more than two entities in which the individual holds a substantial beneficial interest; or

(2) No more than three entities in which the individual holds a substantial beneficial interest.

(b) Except for entities specified in paragraph (c) of this section, each entity entering into a contract or agreement under a program specified in § 1497.1(a) shall, by the date the contract or agreement is submitted to the county committee, notify in writing:

(1) Each individual or other entity that acquires or holds an interest in such entity of the requirements and limitations provided in this part; and

(2) The county committee of the name and social security number of each individual and the name and taxpayer identification number of each entity that holds or acquires a substantial beneficial interest in such entity.

(c) Entities shall not be subject to the provisions of paragraph (b) of this section if, as determined by the Deputy Administrator:

(1) Because of the number of members of such entity no member is likely to have a substantial beneficial interest in such entity; and

(2) Such provisions would cause undue financial hardship on such entity.

(d)(1) An individual or entity that holds a substantial beneficial interest in more than the number of permitted entities specified in paragraph (a) of this section, for which a contract or agreement has been submitted to the county committee shall notify the county committee, in each county in which they conduct a farming operation, in writing of those entities that shall be considered as permitted entities by a date as determined by the Deputy Administrator following the date the contract or agreement was submitted to the county committee.

(2) The remaining entities in which the individual or entity holds a substantial beneficial interest shall be notified that such entity is subject to reductions in the payments earned by the remaining entity. Such a reduction shall be made in an amount that bears the same relationship to the full payment that the individual's interest in the entity bears to all interests in the entity. The remaining entity's members shall have the opportunity to adjust among themselves their proportionate shares of the program benefits in the designated entity or entities before such reductions are made.

(e) In an individual or entity fails to make such a notification as specified in paragraph (d) of this section, all entities in which the individual or entity holds a substantial beneficial interest shall be subject to a reduction in payments in the manner specified in paragraph (d)(2) of this section.

Subpart E—Cash Rent Tenants

§ 1497.401 Cash rent tenants.

(a) Effective for the 1989 crops, except as provided in paragraphs (b) of this section, any tenant that is actively engaged in farming under the provisions of subpart C and conducts a farming operation in which the tenant rents that land for cash or a crop share guaranteed as to the amount of the commodity and receives benefits, including planted history credit under part 1413 of this chapter, with respect to such land under a program specified in § 1497.1(a) shall be considered to be the same person as the landlord unless the tenant makes a significant contribution to the farming operation of:

(1) Active personal labor and capital, land or equipment; or

(2) Active personal management and equipment. If such equipment is leased by the tenant farm:

(i) The landlord, the lease must reflect the fair market value of the equipment leased.

(ii) The same individual or entity that is providing hired labor to the farming operation, the contracts for the lease of the equipment and for the hired labor must be two separate contracts which reflect the fair market value of the leased equipment and the hired labor and the tenant must exercise complete control over the use of a significant amount of the equipment during the current crop year.

(b) Any cash rent tenant that because of any act or failure to act would not meet the provisions of either paragraph (a)(1) or (2) of this section and would therefore be considered to be the same person as the landlord under the provisions in paragraph (a) of this section shall not be considered the same person if the county committee had previously determined the tenant and landlord to be separate persons, and the landlord did not consent to or knowingly participate in the tenants's failure to meet the provision of either paragraph (a)(1) or (2) of this section.

(c) Any cash rent tenant that would be considered to be the same person as the landlord except for the provisions of paragraph (b) of this section shall be eligible to receive payments with respect to such cash rented land only to the extent that the cash rent tenant would be received such payments if the provisions of paragraph (b) of this section did not apply.

(b) Effective for the 1990 through 1995 crops, any tenant that is actively engaged in farming under the provisions of subpart C and conducts a farming operation in which the tenant rents the land for cash or a crop share guaranteed as to the amount of the commodity and receives benefits, including planted history credit under part 1413 of this chapter, with respect to such land under a program specified in § 1497.1(a) shall be ineligible to receive any payment with respect to such cash rented land unless the tenant makes a significant contribution to the farming operation of:

(1) Active personal labor and capital, land or equipment; or

(2) Active personal management and equipment. If such equipment is leased by the tenant from:

(i) The landlord, the lease must reflect the fair market value of the equipment leased.

(ii) The same individual or entity that is providing hired labor to the farming operation, the contracts for the lease of the equipment and for the hired labor must be two separate contracts which reflect the fair market value of the leased equipment and the hired labor and the tenant must exercise complete control over the use of the significant amount of the equipment during the current crop year.

PART 1498—FOREIGN PERSONS INELIGIBLE FOR PROGRAM BENEFITS

2. The authority citation for 7 CFR part 1498 continued to read as follows:

Authority: 7 U.S.C. 1308, et seq.

3. In § 1498.3, paragraph (a) is revised, paragraph (b) is redesignated as (c) and a new paragraph (c) is added; and in redesignated paragraph (c), the definitions of "Active Personnel Labor", "Capital", "Entity", "Land", and "Person" as removed.

§ 1498.3 Definitions.

(a) The terms defined in part 719 of this chapter shall be applicable of this part and all documents issued in accordance with this part, except as otherwise provided in part 1497 or this section.

* * * * *

(b) The terms defined in part 1497 of this chapter shall be applicable to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

* * * * *

Signed this 20 day of February 1991 in Washington, DC

John A. Stevenson,

Acting Executive Vice President, Commodity Credit Corporation, Administrator, ASCS

[FR Doc. 91–4527 Filed 2–27–91; 8:45 am]

BILLING CODE 3410–05–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 100

Public Meeting To Discuss Seismic and Geologic Siting Criteria for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The purpose of this meeting is to further the licensees' understanding of the topics within appendix A that the NRC staff is considering for potential revision and to present the current schedule for the revision of appendix A.

DATES: March 6, 1991, 1:30–3:30 p.m.

ADDRESSES: U.S. Nuclear Regulatory Commission, room 013, 5650 Nicholson Lane, Rockville, Maryland 20850.

FOR FURTHER INFORMATION CONTACT: Andrew J. Murphy, Division of Engineering, Office of Nuclear Regulatory Research, Washington, DC 20555 Telephone (301–492–3860).

L. C. Shao,

Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 91–4773 Filed 2–27–91; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR–91–5]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. 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 diposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 29, 1991.

ADDRESSES: Send comments on any petition in triplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 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 Rules 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: Ida Klepper, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Indpendence Avenue., SW., Washington, DC 20591; telephone (202) 267–9688.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on February 22, 1991.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Rulemaking

Docket No.: 26414.

Petitioner: Rohr Industries, Inc.

Regulations Affected: 14 CFR part 1.

Description of Petition: To amend part 1 to add the following definition, "Serial Number", one in a series of consecutive numbers which provides a permanent means of unique identification, allowing for traceability back to the point of origin for a critical part or major assembly.

Petitioner's Reason for the Request: The petitioner believes that defining the term would promote accuracy and consistency throughout the industry.

[FR Doc. 91–4744 Filed 2–27–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Ch. I

[Summary Notice No. PR–91–6]

Petition for Rulemaking: Notice of Withdrawal of Petition

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of withdrawal of petition for rulemaking.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of a request for withdrawal of a petition that requested the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations (FAR). The purpose of this notice is to notify the public that a petition for rulemaking to amend § 91.55 of the FAR to prohibit a person from commencing a flight under visual flight rules during the time period of 1 hour after sunset until 1 hour before sunrise (56 FR 806; January 9, 1991) has been withdrawn by the petitioner. A summary of the withdrawal is being published because of the significant public interest in the petition.

FOR FURTHER INFORMATION CONTACT: Ida Klepper, Office of Rulemaking

(ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9688.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on February 21, 1991.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Rulemaking

Docket No.: 26373 (Originally published as 26273)

Petitioner: Mr. Ken McKay.

Regulations Affected: 14 CFR 91.55 (old § 91.105).

Description of Petition: To amend § 91.55 to prohibit a person from commencing a flight under visual flight rules during the time period of 1 hour after sunset until 1 hour before sunrise.

Petitioner's Request for Withdrawal: The petitioner requests that the petition for rulemaking be dropped. The letter was a term paper and meant to be a personal letter to Mr. Busey and was in no way intended to be interpreted as a petition for rulemaking. The petitioner requests that this action go no further towards becoming an actual amendment to the FAR.

[FR Doc. 91–4791 Filed 2–27–91; 8:45 am]

BILLING CODE 4910–13–M

Office of Commercial Space Transportation

14 CFR Ch. III

[OST Docket No. 47425; Notice 91–4]

RIN 2105–AB77

Commercial Space Transportation; User Fees

AGENCY: Department of Transportation, Office of the Secretary, Office of Commercial Space Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Commercial Space Launch Act of 1984, as amended, grants the Department of Transportation authority to license and regulate commercial launch activities. Pursuant to the Independent Offices Appropriations Act of 1952, as amended, the Department is authorized to prescribe regulations establishing charges or fees for services provided to any person (other than U.S. Government personnel on official business) in carrying out the Department's responsibilities under the Commercial Space Launch Act. The purpose of this Notice of Proposed Rulemaking is to propose a schedule of fees for certain activities involved in reviewing a license application and issuing and administering a license authorizing the conduct of commercial launch activities. The proposed fee schedule includes a fixed license application fee of $2,500 per year, a variable pre-launch fee of $2.50 per pound of delivery capability of the launch vehicle to low earth orbit for an orbital launch, and a fixed per-launch fee of $1,000 for a suborbital launch.

DATES: Comments must be received by April 1, 1991.

ADDRESSES: Comments should be mailed in duplicate to Documentary Services Division, C–55, Docket 47425, U.S. Department of Transportation, room 4107, 400 Seventh Street, SW., Washington, DC 20590. In order to facilitate the Department's review, we request that three (3) additional copies of the comments be submitted and that commenters include a reference to the docket number of this Notice. Persons wishing to receive acknowledgement of receipt of their comments should include a self-addressed, stamped postcard. The Documentary Services Division will time and date-stamp the card and return it to the commenter. Copies of materials relevant to this rulemaking, including copies of all public comments, are kept in the Documentary Services Division, room 4107, at the above address. The docket is available for inspection between 9 a.m. and 5 p.m. et Monday through Friday, excluding federal holidays.

Any person may obtain a copy of this NPRM by submitting a written request to the Office of Commercial Space Transportation, Associate Director for Program Affairs, 400 Seventh Street, SW., room 5415, Washington, DC 20590, or by calling (202) 366–5770. Requests must include the number of this NPRM. Persons interested in receiving copies of future rulemaking notices should also request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

FOR FURTHER INFORMATION CONTACT: Elaine Orfanos David, Office of the Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9305.

SUPPLEMENTARY INFORMATION:

Introduction and Background

Pursuant to Executive Order No. 12465, issued in 1984, the Department of Transportation (DOT) was designated lead agency for commercial space launch activities. The Commercial Space Launch Act of 1984, as amended (Pub. L. 98–575 and 100–657), 49 U.S.C. App. 2601–2623 (CSLA), granted the Secretary of Transportation the authority to license and regulate United States commercial space launch activities. Among the stated purposes of CSLA are protection of public health and safety, safety of property, and national security and foreign policy interests of the United States. Moreover, in carrying out the CSLA, the Secretary is required to encourage, promote, and facilitate development of a competitive commercial space transportation sector.

The Secretary's responsibilities under the CSLA are implemented by DOT's Office of Commercial Space Transportation (OCST), which has three divisions: The Industry Policy and Planning Division, the Program Affairs Division, and the Licensing Programs Division. The Industry Policy and Planning Division provides research and analysis in support of DOT and other federal policy-making entities. The Program Affairs Division coordinates OCST activities and engages in industry and public outreach. Licensing and regulatory activities are the responsibility of the Licensing Programs Division. The licensing program covers launches and launch site operations. Thus far, licenses have been geared to specific launches or groups of launches and associated launch site activities. In the near future, OCST also expects to issue licenses to cover separately launches (either individually, or in groups), and on-going support activities.[1] OCST also expects to implement required licensing for commercial launch sites.

OCST's appropriations for fiscal year 1991 reflect Congressional sentiment that "a viable user fee structure should be established" for its regulatory activities, and the FY91 DOT Appropriations Act provides that "there may be credited up to $300,000 to this account funds received from user fees."

The general statutory authority for the establishment of federal user fee programs is the Independent Offices Appropriations Act of 1952, as amended (IOAA). The IOAA authorizes federal agencies to prescribe regulations establishing charges for services provided to any person (other than a

[1] These new types of licenses will reflect the manner in which commercial launch firms carry out their launch activities, and will address more accurately the risks of such activities for purposes of establishing financial responsibility requirements.

person on official business of the U.S. Government). The intent of the IOAA is to make such services "self-sustaining to fullest extent possible," by establishing charges that are fair and based on (i) The costs to the government, (ii) the value of the goods or services provided to the recipient, (iii) public policy served, and (iv) other relevant facts.

Guidelines for federal agency user fee programs are provided in OMB Circular A–25, User Charges (52 FR 126, 7/1/87). The Circular serves as the implementation directive for the user fee authority in the IOAA, and is the only government-wide policy statement on user fees. The Circular directs that user fees be charged when there is a specific, identifiable beneficiary, but not when the beneficiary is the general public, or when the identification of the ultimate beneficiary is obscure. The OMB Circular also provides that all costs—direct and indirect—be recovered, but allows for exceptions to the general policy in certain circumstances. DOT has issued its own implementing directive on user fees, Order No. 2510.1A, which defers to the OMB Circular for purposes of criteria to determine user charges.

User Fees

A. General

User fees are charges levied on identifiable recipients for government-provided goods or services that confer benefits beyond those received by the general public. User fees are distinguished from general taxes in that user fees are chargeable against those who benefit from a government activity, while general taxes are not directly related to consumption of specific government-provided goods or services. User fees are linked to consumption of the goods or services, and are intended ideally to achieve cost recovery in the interests of efficiency. Thus, a user fee will result in a more efficient allocation of society's resources to the extent that the user bears the full cost of producing a product, rather than deferring those costs to the general public.

Despite administrative and judicial consideration of user fees and different user fee programs, there are no specific guidelines for allocating the costs of benefits among identifiable recipients and other beneficiaries of the government activity. A workable rule of thumb, recommended by the Administrative Conference of the United States (ACUS) following a legal and economic analysis of federal user fees (1 CFR 305.87–4), is that where the general public or third parties benefit significantly from government goods or services, user fees should not be expected to recover fully the cost of providing such goods or services.

There is also no precise formula for determining how large or small a portion of the cost of providing a government service should be recovered through user fees. Determining the true allocation of benefits among beneficiaries and quantifying the value of those benefits are rarely possible. One method of setting an upper limit on user fees that is usually (although not always) used is to limit total fee revenues to the government's cost in providing the service. However, fees below this level are appropriate where identification of the specific beneficiary is obscure and the service can be considered primarily to benefit broadly the general public; or where such fees may help to achieve other policy or program objectives. (See OMB Circular A–25 and ACUS Recommendations, *supra.*)

The House Committee on Appropriations has requested OCST to submit by January 15, 1991, a comprehensive report on the potential for cost recovery of OCST's licensing and related activities through a user fee program. The report is to address the ability of the industry to pay such fees, a proposed user fee structure and an assessment of the feasibility of recovering all OCST costs through user fees. Moreover, preliminary guidance for OCST cost recovery through user fee has been given in the FY91 DOT Appropriations Act. No strict maximum for fee revenues is set, but the Act provides that up to $300,000 in user fees collected for regulatory services may be applied to OCST's operations and research appropriation in fiscal year 1991, signalling Congressional expectation about an appropriate level of user fees in FY 91.

B. Factors Influencing OCST Proposal

As discussed above, user fees are assessed on government-provided goods and services that confer benefit on identifiable beneficiaries. The identifiable beneficiaries of OCST program activities are considered to be firms in the commercial space transportation industry that apply for and/or receive "permission to operate" from the government, required by the CSLA and necessary because commercial space transportation activities impose external costs on the general public.

Licensing activities are directed toward specific commercial space transportation firms that have applied for or are operating under an OCST-issued license, providing an easily identifiable recipient of many OCST services. In contrast, other program activities (industry policy and planning, program affairs and certain regulatory activities) are directed to regulating, and promoting the development and facilitating the financial success of, the industry as a whole rather than individual firms. Indeed, some of these other program activities benefit commercial space transportation firms that may not even require a license in any given time period, as well as other commercial space sector entities with an interest in the success of the industry (e.g., insurers, financial institution, suppliers and satellite manufacturers and operators). Moreover, administrative concerns (such as the cost of collecting user fees) are most easily resolved by linking user fees to the licensing process, which already has in place procedures and timetables for interacting with specific firms.

At this time, it is proposed that cost recovery through OCST's user fee program will be limited to a portion of the total cost of OCST's licensing activities. This is consistent with national policy guidance reflected in the CSLA and articulated in the National Space Policy. Government space policy links a robust commercial launch sector with advancing U.S. national security and foreign policy interests, enhancing opportunities for economic growth and maintaining international leadership in space. Moreover, federal agencies are directed to encourage, promote and facilitate the development of a viable, competitive commercial space transportation industry, and to avoid taking action that could deter or preclude such activities. Indeed, the U.S. government has placed special emphasis on space policy and programs and has established specific decision-making mechanisms in the Executive Office of the President to ensure furtherance of national space objectives.

The U.S. commercial space transportation industry has made great progress in the last several years. It is, however, still an emerging industry carrying out high-risk operations in the context of a very competitive international market. Certain elements of the industry are also on the cutting edge of space transportation technological development. Additional operational costs for these firms, whether or not passed on to other parties, could have serious adverse impacts on their ability to survive.

The Department's user fee proposal reflects these concerns. Thus, consistent with Congressional guidance set forth in the FY91 DOT Appropriations Act, user

fees for fiscal year 1991 have been set at a level to recover on an average annual basis a total of $300,000, representing a portion of OCST's costs for personnel, contracts, and travel associated with review of license applications and issuance and administration of licenses.

C. User Fee Proposal

OCST proposes to institute a schedule of user fees directed at identifiable OCST program beneficiaries to compensate the Government for activities involved in the review of a license application and issuance and administration of a license authorizing a private party to conduct commercial space transportation operations.

These activities include routine administration and maintenance of a license application and the license as issued; a mission review and a safety review associated with evaluation of a license application; development of financial responsibility requirements, including determination of maximum probable loss and reciprocal waiver of claims agreements, and other conditions of a license; and monitoring compliance with licensing requirements. Mission review, safety review, and the establishment of financial responsibility requirements are prerequisites for the issuance of a license authorizing commercial launch activities. Demonstration of compliance with financial responsibility and other requirements of the license is a condition of the licensee's authorization to commence licensed actitivies.

In performing mission and safety reviews, OCST considers the launch range to be used, the purpose of the mission, the nature of the launch and related activities, the flight plan, and the type of vehicle. Once the license is issued, OCST carries out a program of monitoring the activities of the licensee to ensure compliance with requirements of the CSLA, OCST regulations, and the license. Compliance monitoring can include inspections of the vehicle and payload, launch site facilities, and activities associated with preparation for and conduct of a launch.

To establish financial responsibility requirements for licensed activities, as provided in section 16 of the CSLA, a licensee must demonstrate financial responsibility in amounts equal to maximum probable loss from certain claims resulting from licensed activities. Determination of maximum probable loss requires extensive risks analyses and assessments of historical accident data for the various launch proposals. Once established, DOT is required to ensure that firms meet financial responsibility requirements, either by obtaining insurance or otherwise demonstrating financial responsibility. Section 16 of the CSLA also provides for reciprocal waiver of claims agreements among the principal launch participants, including the U.S. Government. To carry out this responsibility, OCST prepares and executes such agreements and monitors execution by the other parties.

One way of implementing a user fee regime to recover costs of OCST licensing activities described above would be to track the cost that OCST incurs in reviewing a license application and issuing and maintaining in force each license, and to charge each licensee an amount equal to such cost. However, such a tracking system would have a number of disadvantages.

First, it would require a complex cost accounting system, in which OCST staff would be required to log in and out to register the time required to perform the numerous review and processing steps associated with each license application. The additional costs of developing and implementing such a system would have to be spread across the nine or ten firms likely to seek launch licenses during the next few years. This would result in a higher fee, in the final analysis, than an alternative system that does not rely on a precise cost-accounting system.

Another disadvantage of the cost-accounting approach to user fees arises out of the fact that certain types of license applications—namely, those that incorporate the use of an innovative technology, a new launch site, or some other factors affecting public safety or U.S. national interests, or those that respond to a new OCST launch license format—require extensive one-time administrative effort to review and process. Once work is completed on the first such license application, subsequent applications involving the same or similar elements require considerably less staff time. The effect of the cost-accounting approach in this context would be that the first of many prospective licensees submitting such applications bears the burden of a higher fee while successor licensees obtain the benefit of the review without the same costs.

Moreover, in the case of proposals reflecting innovative technologies, this result is undesirable. Disproportionately higher fees would create a disincentive to develop and use innovative technologies, particularly for entrepreneurial firms. Thus, reliance on a cost-accounting approach would contravene OCST's mission to encourage and facilitate such innovation.

A further disavantage of the cost-accounting approach is that it does not accurately correlate with the benefits conferred on a licensee from the licensing process. Issuance of a license authorizes the licensee to conduct launch activities; the value of the launch license to the licensee is typically measured according to the size and weight of a payload, which, in turn corresponds to the revenues the launch is expected to produce. The cost-accounting approach could thus result in a fee that is relatively low compared to the benefits enjoyed by the licensee, simply because the launch proposal reflects no new or untested elements that would require more extensive staff review.

Rather than a strict cost-accounting fee system, OCST proposes a two-tiered user fee designed to overcome the disadvantages of a cost-accounting method and allocate fees in a more equitable manner. The first tier involves a license application fee and an annual license renewal fee; the second tier involves a per-launch fee that varies for orbital launches and is fixed for suborbital launches. The license application and annual license renewal fees generally cover the routine costs of reviewing a license application and issuing and administering a license. These costs are generally constant and do not vary significantly by type of vehicle or launch site. The per-launch fee for orbital launches is intended to cover license-specific costs that vary by launch vehicle, launch site, flight plan, etc., and will be based on a parameter that correlates closely with the benefit a licensee receives from its authorization to conduct the launch. The annual fee, the surrogate parameter and the orbital launch fee will be established in such a way as to generate revenues to cover a significant portion of the costs of OCST licensing activities.

OCST believes that the two-tiered fee approach is less onerous than a lump sum fee to recover total costs at the time a license is issued. The two-tiered approach requires that a launch company pay only a relatively small fee to apply for a license and, if necessary, to renew the license on an annual basis. Once a license is issued, the balance of the fee is assessed no later than thirty days after launch which correlates generally with the time that costs are incurred by OCST for compliance monitoring activities and revenue accrues to the licensee. OCST believes that this type of fee system will not act as a barrier to entry into the industry and will ease the payment process for new and/or entrepreneurial entrants.

One theoretical drawback to OCST's approach is the possibility that user fee revenues in any given year could be relatively low if launches do not actually take place as scheduled. OCST invites public comment specifically on the question of whether a cost-accounting approach would be free of this disadvantage.

The proposed license application fee of $2,500 per license application would be payable at the time of application. The application fee would be required regardless of whether a license is granted or denied. To maintain a license in effect beyond one year, a renewal fee of $2,500 would be payable on or before the anniversary date of license issuance. Both the license application and the renewal fees would be nonrefundable.

The proposed per-launch fee structure for an orbital launch would be based on payload lift capability of the launch vehicle to low earth orbit (28.5 degree inclination, nominal 150 mile circular orbit). The fee would involve a per-launch charge of $2.50 per pound of payload lift capability. The proposed per-launch fee for a suborbital launch would involve a flat fee of $1,000.

OCST believes that total payload lift capability in a baseline mission profile is an appropriate surrogate parameter with which to calculate the per-launch fee for orbital launches because it tends to correlate quantity of benefit conferred with amount of fee assessed. The required payload capacity data are readily available, and the surrogate measure accounts for variations in vehicle configuration leading to different payload capacities. Companies that launch larger, more capable vehicles receive greater benefits from a license due to their greater revenue potentials than those that launch smaller, less capable vehicles that produce less revenue in a given launch operation. The per-launch fee for suborbital launches does not vary by vehicle payload capability because the benefit accruing to the licensee is relatively modest, performance capability comparisons are difficult to quantify for such launches, and the variance among different launch vehicles is not significant for purposes of OCST activities.

OCST invites public comment on the selection of a user fee approach that is based on considerations of efficiency, policy objectives and value of benefits conferred, as well as actual costs of providing the licensing services.

D. Other Surrogate Parameter Alternatives

Other surrogate parameters that were considered by OCST to generate equivalent revenues to cover licensing activities included: 1. Orbital launch mass; 2. Maximum probable loss determination; and 3. Orbital launch price. Each of these is discussed briefly below:

1. Launch Mass

A per-launch fee of approximately $60 per full thousand pounds of orbital launch mass at ignition was considered. Launch mass at ignition refers to total weight of the vehicle, its fuel and payload. While there are user fee precedents based on mass in other transportation fields, this surrogate can produce anomalous results for launch vehicles because there is no necessary correlation among vehicle mass, productivity, and value of benefit conferred to the licensee. Although straightforward and easy to calculate, the assessment does not always track with the value of the launch to the licensee when compared with the value of benefits accruing from the launch of other vehicles.

2. Maximum Probable Loss Determination

A per-launch fee of $190 per million dollars of maximum probable loss to third parties associated with the launch was also considered. The maximum probable loss is determined by OCST during its launch application review process. It is calculated after considering the launch vehicle, launch site, flight plan, payload, and other characteristics of the launch. This option was not selected as the surrogate parameter because the maximum probable loss can be influenced strongly by such factors as launch range facility location. It may also be affected by circumstances and events involving other entities in the space industry and outside the control or responsibility of the licensee (e.g., changes in safety procedures at the launch site).

3. Launch Price

A per-launch fee of approximately $600 per million dollars of the price charged for the orbital launch was also considered by OCST. This option was not selected because the price among individual launches may vary depending on circumstances surrounding the price competition. Further, launch price is often considered confidential by the launch company. The fee rate, therefore, could not be established precisely and would not necessarily generate the appropriate revenue levels from user fee collection.

E. Suborbital Launches

Suborbital launch fees will be considered as a separate category. Because of the relatively modest value received for any one launch activity, and the lack of correlation of specific performance parameters, a flat fee for suborbital launches is established at $1,000 per launch.

Economic Impact of Alternative Measures

The U.S. commercial space launch industry is comprised of a small but growing number of firms offering a broad spectrum of different launch capabilities at various prices. User fees will be levied directly on the launch companies, which presumably would absorb the added costs (in part or in full), or recover these costs from the payload owner. The extent to which a launch company can pass through user fees will depend on the level of competition for its services and its operating profit margins. In general, the user fees proposed today represent a very small fraction of the total revenues derived from a launch operation and are not expected to have a negative impact on the rate of growth of the commercial space launch industry or the financial viability of any of the existing firms in the industry.

In support of this rulemaking, OCST has prepared a "Regulatory Evaluation of User Fees," which is available in the docket supporting this rulemaking. The regulatory evaluation subdivides commercial space launch vehicles into three groups: (1) Large vehicles defined as having a Low Earth Orbit (LEO) delivery capacity that is greater than 6,500 pounds; (2) Small vehicles defined as having a LEO delivery capacity that is less than or equal to 6,500 pounds; and (3) Suborbital vehicles. In order to provide a hypothetical projection of revenues from user fees, the regulatory evaluation assumes that, through 1995, there will be eight large vehicle launches annually, ten small vehicle launches annually, and six suborbital launches annually. OCST believes there are realistic scenarios where annual launch levels may exceed these projections; however, for the purposes of establishing a hypothetical reference point for the regulatory evaluation, these launch levels were selected. The economic analysis estimates that the average annual per-launch revenues (excluding license application and renewal fees) from the preferred user fee option would be $351,000. The average annual per-launch revenues (excluding license application and renewal fees) from the other options would range between $293,000 and $397,000.

Section-by-Section Analysis

Part 413—Applications

Section 413.5 has been amended by adding a new subsection (d) that specifies that an annual fee of $2,500 must accompany any license application to conduct commercial space activities. This annual fee is applicable regardless of the length of time the license is in force. That is, whether the license is in force for one month or several years, the annual fee of $2,500 must be paid. The full $2,500 fee must accompany the license application even if the license is denied or is in force for less than one year. If the license is for activities that cover more than one year, the $2,500 fee must accompany the original license application, and subsequent annual payments of $2,500 must be paid on or before the anniversary date of issuance of the license, in order for the license to remain in force. The $2,500 payment, in the form of a certified check or wire transfer payable to the Department of Transportation, Office of Commercial Space Transportation, must accompany any and all license applications and is non-refundable. Application for any license, including a launch license as well as any other type of license, must be accompanied by a license application fee.

Part 415—Launch Licenses

Section 415 Subpart A has been amended by adding a new § 415.4 that requires that a fee be paid to OCST for each launch that is conducted under a launch license issued by OCST. The per-launch fee differs for orbital and suborbital launches, and must be paid in addition to the license application fee. For orbital launches, the fee will vary depending on the maximum delivery capacity of the vehicle. The fee is $2.50 per pound of payload lift capability to low earth orbit, and will be calculated based on a nominal 150 nautical mile circular orbit with a 28.5 degree inclination, launched from the Eastern Space and Missile Center in Florida. These parameters are relevant only for the calculation of the launch fee; they allow for a uniform frame of reference and do not necessarily correlate with the parameters of the specific mission to which the fee applies. For suborbital launches, a fee of $1,000 must be paid to OCST for each launch. This fee does not vary by vehicle payload capability because the benefit accruing to the licensee is relatively modest, performance capability comparisons are difficult to quantify for such launches, and the variance among different launch vehicles is not significant for purposes of OCST activities.

Section 415.9 has been added to specify that full payment of the launch fee must be received by OCST no later than 30 days after launch. The fee must be payable to the Department of Transportation, Office of Commercial Space Transportation, and must be paid by certified check or wire transfer.

Summary of Supporting Analyses:

A. Executive Order No. 12291

Executive Order (E.O.) No. 12291 requires that regulations be classified as major or non-major for purposes of review by the Office of Management and Budget (OMB). According to E.O. No. 12291, major rules are regulations that are likely to result in:

(1) An annual effect on the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or

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

OCST has determined that the proposed rule is non-major because it would not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices referenced in (2) above, or any of the significant adverse effects referenced in (3) above.

This proposed rule has been submitted to OMB for review, as required by E.O. No. 12291.

B. Department Regulatory Policies and Procedures

This proopsed regulation is significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because it involves a matter on which there is substantial public interest or controversy and initiaties a substantial change in policy. A regulatory evaluation analyzing the economic effects of this proposal has been prepared and placed in the public docket for this rulemaking.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, whenever an agency issues a proposed or final rule, it must prepare and make available a Regulatory Flexibility Analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions), unless the agency's administrator certifies that the rule will not have a significant impact on a substantial number of small entities. On the basis of the analysis contained in the economic analysis document supporting this rulemaking with respect to the impact of this proposed rule on small entities, I hereby certify that this rule will not have a significant impact on a substantial number of small entities. This proposed rule, therefore, does not require a Regulatory Flexibility Analysis.

D. Paperwork Reduction Act

There are no reporting or record-keeping provisions included in this rule that require approval from the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 14 CFR Chapter III

Administrative practice and procedure, Space transportation and exploration, Launch operations, Launch vehicles, User fees.

Issued in Washington, DC, February 20, 1991.

Stephanie Lee-Miller,

Director, Office of Commercial Space Transportation.

For the reasons set out in the preamble, title 14 of the Code of Federal Regulations will be amended as follows:

PART 413—APPLICATIONS

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 9, 10, 11 and 20, Pub. L. 98–575 (49 U.S.C. App. 2601 note). * * * § 413.5 also issued under 31 U.S.C. 9701.

2. In § 413.5 paragraph (d) is added to read as follows:

§ 413.5 Application

* * * * *

(d) *Payment with Application.* An application for a license authorizing the conduct of commercial space activities must be accompanied by a license application fee of two thousand, five hundred dollars ($2,500.00).

(1) The license application fee shall be payable upon submission of the application and shall be non-refundable.

(2) The license application fee shall be paid by certified check or wire transfer made payable to the Department of Transportation, Office of Commercial Space Transportation.

(3) Any license issued pursuant to § 413.13 which authorizes activities that continue beyond twelve (12) months may be administratively renewed annually upon payment of a two thousand five hundred dollar ($2,500.00) license application fee, payable on or before the anniversary date of the license issued pursuant to § 413.13.

PART 415—LAUNCH LICENSES

3. The authority citation for part 415 continues to read.

Authority: Secs. 6, 7, 8 and 9, Pub. L. 98–575 (49 U.S.C. App. 2601 note). * * * §§ 415.4 and 415.9 also issued under 31 U.S.C. 9701.

4. A new § 415.4 is added to read as follows:

§ 415.4 Launch fee.

(a) Each licensee shall pay a launch fee for each launch conducted by the licensee pursuant to a launch license.

(b) The launch fee for orbital launches is to be calculated based on maximum payload life capability of the launch vehicle to a nominal 150 nautical mile circular earth orbit with a 28.5 degree inclination launched from the Eastern Space and Missile Center, Florida.

(c) The launch fee for an orbital launch shall be $2.05 per pound of payload lift capability as defined in subsection (b) of this section.

(d) The launch fee for a suborbital launch shall be a flat rate of $1,000 per launch.

5. In Section 415.9 paragraph (e) is added to read as follows:

§ 415.9 Standard conditions.

* * * * *

(e) Provide, no later than 30 days after launch, full payment of the launch fee by certified check or wire transfer made payable to the Department of Transportation, Office of Commercial Space Transportation.

[FR Doc. 91–4596 Filed 2–27–91; 8:45am]

BILLING CODE 4910–62–M

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90–ANM–16]

Proposed Amendment, Coeur d'Alene Control Zone, Coeur d'Alene, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Coeur d'Alene Control Zone, Coeur d'Alene, Idaho, by changing the hours of effectiveness. Currently, the control zone is effective part-time. An Automated Weather Observation System (AWOS) was recently commissioned to provide 24-hour official weather reporting capability for the airport, which makes it possible to designate a full-time control zone. This change would extend the time in which aircraft operating under instrument flight rules could be separated by air traffic control.

DATES: Comments must be received on or before March 29, 1991.

ADDRESSES: Send comments on the proposal to: Bob Brown, ANM–535, Federal Aviation Administration, Docket No. 90–ANM–16, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone: (206) 227–2535.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Bob Brown, ANM–535, Federal Aviation Administration, Docket No. 90–ANM–16, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted 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–ANM–16." 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 at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration. Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, Washington 98055–4056, ANM–530.

Communications must identify the notice number of this NRPM. Persons interested in being placed on mailing list for future NRPM's should also request a copy of Advisory Circular No. 11–2A which best describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the effective time of the Coeur d'Alene Control Zone, Coeur d'Alene, Idaho from part-time to full-time. Recent commissioning of an Automated Weather Observation System (AWOS) at the Coeur d'Alene airport provides 24-hour official weather reporting capability on frequency 135.075 and via telephone. Currently, airport operations and Empire Airways personnel are taking hourly weather observation during the control zone effective hours Monday through Friday 1400–0300 UCT. This change would extend the time in which aircraft operating under instrument flight rules could be separated by air traffic control.

Section 71.171 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 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, 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.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Coeur d'Alene, Idaho [Revised]

Within a 5-mile radius of Coeur d'Alene Air Terminal, Coeur d'Alene, Idaho, (lat. 47°46'28"N., long. 116°49'05"W.); within 4 miles each side of the Coeur d'Alene VOR 251° radial extending from the 5-mile radius zone to 7 miles southwest of the airport.

Issued in Seattle, Washington, on February 7, 1991.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 91–4753 Filed 2–27–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Ch. IX

Natural Resource Damage Assessments Under the Oil Pollution Act of 1990

AGENCY: National Oceanic and Atmospheric Administration (NOAA), of the Department of Commerce.

ACTION: Extension of comment period and announcement of public meeting.

SUMMARY: On December 28, 1990 (55 FR 53478), NOAA provided advance notice of proposed rulemaking concerning the natural resource damage assessment and restoration regulations required by the Oil Pollution Act of 1990. NOAA requested comments, recommendations, ideas, and technical information concerning appropriate assessment procedures, as well as suggestions concerning the rulemaking process. Comments were to be received no later than February 26, 1991. NOAA has received requests to extend the comment period on that advance notice. Through this notice, NOAA announces the extension of the comment period to April 1, 1991, and announces a public meeting concerning this rulemaking process on March 20, 1991, in the Department of Commerce Auditorium in Washington, DC.

DATES: Requests to speak and present information during this public meeting must be received no later than March 15, 1991. The time for receiving written comments concerning the assessment procedures and the rulemaking process has been extended to April 1, 1991.

ADDRESSES: Requests to participate in the public meeting are to be submitted to Bill Triplett, Office of General Counsel, NOAA, U.S. Department of Commerce, 14th St. and Constitution Ave., NW., Washington, DC 20230; (202) 377–1400.

FOR FURTHER INFORMATION CONTACT: Randall Luthi, Office of General Counsel, NOAA, U.S. Department of Commerce, 14th St. and Constitution Ave., NW., Washington, DC 20230, telephone (202) 377–1400, or Linda Burlington, Office of General Counsel, NOAA, c/o NOAA/N/OMA, 6001 Executive Boulevard, room 323, Rockville, Maryland 20852, telephone (301) 443–8865.

SUPPLEMENTARY INFORMATION:

I. Background

The Oil Pollution Act of 1990 ("Act"), Public Law 101–380, provides for the prevention of, liability for, removal of, and compensation for the discharge of oil into or upon the navigable waters or adjoining shorelines of the United States, including the resources of the exclusive economic zone. Section 1006(b) of the Act provides for the designation of Federal, State, Indian, and foreign officials to act on behalf of the public as trustees for the nation's natural resources. In the event that natural resources are injured, lost, destroyed, or the loss use of natural resources occurs as a result of a discharge of oil covered by the Act, these officials are to assess natural resource damages under section 1002(b)(2)(A) of the Act, present a claim, recover damages as a result of injury to natural resources, and develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the natural resources under their trusteeship.

Section 1006(e) of the Act provides that the President, acting through the Under Secretary of Commerce for Oceans and Atmosphere, shall promulgate regulations establishing procedures for the assessement of damages for injury to, destruction of, loss of, or loss of use of natural resources as covered by the Act. Natural resource damage assessments, conducted by the Federal, State, or Indian trustees, in accordance with the procedures promulgated through the Under Secretary of Commerce, shall have the force and effect of a rebuttable presumption on behalf of the trustee in any administrative or judicial proceeding under the Act. Sums recovered by the natural resource trustees as natural resource damages shall be retained by the trustees in a revolving trust account, without further appropriation, for use only to reimburse the trustees' assessment costs or pay the costs incurred by the trustees in planning and implementing the restoration, rehabilitation, replacement, or acquisition of the equivalent of the natural resources under their trusteeship.

In the promulgating of these regulations, the Under Secretary is to consult with the Administrator of EPA, the Director of the United States Fish and Wildlife Service, and the heads of other affected agencies. Congress directed that these regulations are to be promulgated not later than two years after the enactment of the Act, no later than August 18, 1992.

II. Public meeting

In order to gather information to aid in promulgating these regulations, NOAA will hold a meeting open to the public on March 20, 1991, in the Department of Commerce Auditorium, at 14th St. and Constitution Ave., NW., in Washington, DC, from 9:30 a.m. to 4:00 p.m. This meeting will be open to the public, however representatives of organizations that have a direct interest in the assessment process are encouraged to attend. Such interested organizations can include, but not be limited to: Federal response and trustee agencies; States; foreign trustees; Indian tribes; industries, or industry organizations; environmental organizations; natural scientists; and economists.

III. Meeting Agenda Items

Due to the necessary time constraints of the meeting, it is suggested that commenters focus their oral remarks to the following issues:

(1) *Phase approach to rulemaking:* NOAA is currently considering phased approach to accomplish this rulemaking, i.e., first, proposing a form of compensation formula by the end of the calendar year; second, model for use by the natural resource trustees in certain circumstances in the near future; and finally, proposing detailed assessment procedures applicable to all spills before the statutory deadline of August 1992.

Comments are requested upon the use of this approach.

(2) *Feasibility of a compensation formula:* Comment is sought on whether it is technically feasible to develop a compensation formula that would fairly determine damages for a wide variety of spills in all U.S. navigable waters (fresh and salt) and waters within the exclusive economic zones, including adjoining shorelines.

(3) *Compensation formula or Type A computer model:* NOAA is contemplating first developing a compensation formula. Therefore, comment is sought on whether a new compensation formula should be developed or whether the computer model currently being used should be revised to determine damages for injuries to natural resources as a result of a discharge of oil or release of a hazardous substance. The model, referred to as the Type A model, 43 CFR 11.41, was developed under the authority of the Comprehensive Environmental Environmental Response, Compensation, and Liability Act (CERCLA) and establishes an amount of monetary damages based upon average use values. Since the concept of a compensation formula and the Type A model both represent a simplified procedure for determining damages, NOAA seeks comment on whether the use of a compensation formula would be appropriate in some spills, while the Type A model, revised to include average restoration costs and average use and nonuse values, would be more appropriate in other spills.

(4) *Measure of damages:* The strategy of a compensation formula to determine damages for injuries to natural resources is similar to the concept of "liquidated damages" or a "workmen's compensation" program, i.e., a pre-determined schedule of monetary damages triggered by an event, in this case an oilspill. As such, any formula would be an estimate of appropriate damages and not based upon actual costs of restoration plus lost use and nonuse values. NOAA seeks comment concerning the measure of damages for a compensation table. For example, should damages be determined upon a dollar amount per gallon formula? If so, what is an appropriate range of dollars for that dollar figure.

(5) *Bases for habitat classification:* Since it is likely that any compensation formula will be based upon a combination of factors, including toxicity and/or persistence of oil and characteristics of the affected habitat, comment is sought concerning methods and ideas of how to determine habitat and oil classifications. For example, should there be different classifications for different times of the year? What types of factors should be considered in order to develop consistent habitat and oil toxicity and/or persistence classifications for U.S. navigable waters and/or adjoining shorelines and the exclusive economic zones?

(6) *Regional specificity in the compensation table:* Comment is sought concerning the development of a compensation formula, which will reflect regional characteristics. For example, what areas could be logically grouped into regions, either in terms of habitat or geographical factors? Should a regional approach be appropriate, what components within a compensation formula should be national in nature and which should be region-specific? What role should the States have in determining the regional components of the formula?

(7) *Benefits of more meetings before the proposed rule:* Comment is sought concerning the advisability of holding more public meetings before drafting a proposed rule. Would it be more beneficial to hold more public meetings after NOAA has a proposal ready to only which the public could respond?

IV. Information

While commenters will not be required to address only the above-mentioned agenda items, it is suggested that comments concerning other issues be submitted in writing. It is not required for all those submitting written comments either during the original comment period ending February 26, 1991, or before April 1, 1991, to submit oral comments at the public meeting. All comments received, either written or oral, will be a part of the administrative record and will be fully considered during the rulemaking process.

Parties interested in presenting information during this meeting should contact NOAA by March 15, 1991. NOAA will set the agenda and schedules based on the number of requests received and the interests represented. Speaking times may be rather brief depending upon the number of people who wish to present information. Parties representing similar interests may be asked to combine information and to choose one member to present that information. Written presentations can be submitted in lieu of oral remarks. Participants will be contacted during the week of March 18 with topics and times of presentations.

Authority: Sec. 1006(e), Pub. L. 101-380.

Dated: February 22, 1991.

Thomas A. Campbell,

General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 91-4666 Filed 2-27-91; 8:45 am]

BILLING CODE 3510-12-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI-189-84]

RIN 1545-AH46

Debt Instruments With Original Issue Discount; Contingent Payments

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains amendments to proposed regulations relating to certain contingent instruments that are issued for cash or publicly traded property. These amendments would tax these contingent instruments in accordance with their economic substance. They would provide needed guidance to issuers and holders of these contingent instruments.

DATES: Written comments and requests for a public hearing must be received by May 3, 1991. The amendments are proposed to be effective for debt instruments issued on or after February 20, 1991.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention CC:CORP:T:R (FI-189-84), room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Frederick S. Campbell-Mohn at (202) 566-6456 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 1275(d) of the Internal Revenue Code grants the Secretary the authority to prescribe under the original issue discount ("OID") provisions of the Code regulations concerning the tax treatment of obligations that provide for contingent payments. Proposed regulations under section 1275(d) were issued on April 8, 1986 (51 FR 12022). Paragraphs (e) and (f) of § 1.1275-4 of the proposed regulations provide rules for contingent payment obligations that are issued for cash or publicly traded property.

The proposed regulations generally view a contingent payment obligation

entirely as debt. If a contingent payment obligation is issued for cash or publicly traded property and the sum of all the noncontingent payments under the obligation is equal to or greater than its issue price, § 1.1275–4(e) of the proposed regulations provides for separate treatment of the noncontingent and the contingent payments. The noncontingent payments are treated as a separate noncontingent debt instrument under sections 1271 through 1275 of the Code, and all of the issue price of the obligation is allocated to the right to receive the noncontingent payments. The contingent payments are treated entirely as interest and are generally included in the gross income of the holder and deducted by the issuer in the taxable year in which the contingency becomes fixed.

Section 1.1275–4(e) of the proposed regulations ignores the economic substance of many contingent payment obligations. A contingent payment obligation may be equivalent to a combination of a noncontingent debt instrument and one or more options or other property rights. Treating the contingent payment obligation entirely as debt results in timing and character of income different from that which would result if the debt instrument and other property rights were treated as separate instruments.

Explanation of Provisions

The amendments to the proposed regulations apply to any contingent instrument that: (1) Is issued for cash or publicly traded property; (2) provides for noncontingent payments equal to or greater than the instrument's issue price; and (3) provides for one or more contingent payments determined, in whole or in part, by reference to the value of publicly traded stock, securities, commodities, or other publicly traded property. These instruments are removed from the scope of § 1.1275–4(e) and made subject to new § 1.1275–4(g).

The amendments to the proposed regulations focus on the economic substance of the contingent instruments to which they apply and divide each instrument into its component parts. The issue price of the contingent instrument is allocated to the components on the basis of their respective values, and each component is taxed as it would have been taxed had it been issued as a separate instrument. The intent underlying the regulations is that there should be no tax advantage afforded a contingent instrument as compared to separate instruments that, taken together, have similar economic effect.

If the sum of the noncontingent payments on a contingent instrument equals or exceeds the issue price of the instrument, one component of the instrument clearly is noncontingent debt. The portion of the issue price of the contingent instrument that reflects the right to receive the noncontingent payments is the issue price of the noncontingent debt component. Once the issue price of the noncontingent debt component is determined, the OID accruals can be computed under sections 1271 through 1275 in the same manner as with any noncontingent debt instrument.

The components of the instrument that provide for contingent payments are not debt. Those components constitute one or more options or other property rights. In some cases, identical or nearly identical property rights may be available in the market; in other cases, similar property rights may not be available in the market as separate instruments. In either situation, the rights to the contingent payments will have the economic characteristics of one or more options or other property rights and can be taxed as they would be taxed if issued separately.

In separating a contingent instrument into its component parts, the amendments to the proposed regulations recognize that a contingent instrument is similar to an investment unit described in section 1273(c)(2) of the Code. Thus, rules similar to those prescribed for investment units are appropriate in determining the value of each component of a contingent instrument. Unless the contingent components are substantially equivalent to publicly traded property, the issue price of the contingent instrument is allocated to its components based on the rules of § 1.1273–2(d)(2)(iv) of the proposed regulations, which apply to an investment unit in which neither the property right nor the debt instrument is publicly traded.

This approach could be extended to all convertible debt instruments to identify the debt and option components of those instruments. Consistent with § 1.1273–2(e) of the proposed regulations, however, § 1.1275–4(a) of the proposed regulations has been amended to provide expressly that an instrument will not be subject to the proposed regulations as amended merely because the instrument is convertible into the stock or another debt instrument of the issuer. An instrument that has a cash settlement conversion right or that is convertible into the stock or a debt instrument of another corporation, however, will be separated into its component parts. Similarly, consistent with § 1.1272–1(f)(4), the proposed regulations have been amended to provide expressly that an instrument will not be subject to the proposed rules merely because the instrument is subject to a put or call option or an option to extend. Comments are invited regarding the appropriateness of continuing these exclusions.

The proposed regulations under § 1.1275–4(g) generally apply only when the sum of the noncontingent payments under the contingent instrument equals or exceeds its issue price, and only when one or more contingent payments are determined, in whole or in part, by reference to the value of publicly traded stock, securities, commodities, or other publicly traded property. This approach, however, could be extended to other contingent instruments. For example, this approach could be applied to all instruments subject to § 1.1275–4(e) of the proposed regulations without regard to the way in which the contingent payments are determined. Moreover, it could be applied to contingent payment obligations subject to § 1.1275–4(f) of the proposed regulations, under which some or all of the repayment of principal is contingent. Many contingent principal instruments could be separated into debt components and components similar to futures or forward contracts. Consideration is being given to extending the application of the new rules, and comments on this subject are invited.

Section 1.1275–4(f) of the proposed regulations is amended to provide that an instrument with an insubstantial amount of contingent principal may nonetheless be subject to the rules of § 1.1275–4(g) if it more appropriately is taxed under those rules. The purpose of this amendment is not to change the rules for most contingent principal instruments, but to deal with instruments that are designed to avoid the scope of § 1.1275–4(g).

In addition to comments regarding the possible extension of the approach of these amendments to contingent payment obligations not currently within their scope, the Service invites comments on the merits of alternative approaches. For example, current income or loss could be determined by reference to changes in the market value of the contingent payment obligation ("marking to market") or in the value of the index or property right underlying the contingency ("marking to index"). Some alternative approaches might not feasibly be applied to all contingent instruments. The Service invites

comments on whether it is preferable to apply different approaches to different types of instruments or instead to attempt to tax all contingent payment obligations under a single set of rules. For example, it might be possible to allocate issue price between contingent and noncontingent payments as under § 1.1275–4(g), but tax all contingent payments under rules similar to § 1.1275–4(f). Any single set of rules should ensure that the timing and character of income and loss are consistent with the economic substance of the contingent payment obligations.

In general, a bond denominated entirely in a single nonfunctional currency (with no contingencies) is not subject to these rules. See § 1.988–2T(b) and Ann. 86–92, 1986–32 I.R.B. 46. The Service, however, may amplify or amend these rules in regulations published under section 988 addressing certain foreign currency obligations (e.g. dual currency bonds). The Service may also amplify or amend these rules in regulations published under section 897 addressing certain transactions relating to United States real property interests. Further, the amendments to the proposed regulations do not affect the possible characterization of income from certain financial products as income equivalent to interest under section 954(c)(1)(E) or the allocation and apportionment of interest expense under section 861.

Special Analyses

These proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these amendments to the proposed regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f)(1) of the Code, these amendments will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Comments and Public Hearing

Before adopting these amendments to the 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 held upon written request to the Internal Revenue Service by any person who also submits written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations is Frederick S. Campbell–Mohn, Office of Assistant Chief Counsel (Financial Institutions & Products), Office of Chief Counsel, Internal Revenue Service. However, other personnel from the Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR 1.1271–1 through 1.1297–3

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

Proposed Amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR part 1 are as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

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

Authority: 26 U.S.C. 7805 * * * § 1.1275–4 also issued under 26 U.S.C. 1275(d).

Par. 2. Section 1.1275–4, as proposed on April 8, 1986 (51 FR 12087), is amended as follows:

1. Paragraph (a) is revised.
2. A new sentence is added to the end of paragraph (e)(1).
3. A new sentence is added to the end of paragraph (f)(1).
4. Paragraph (g) is redesignated as paragraph (h) and a new paragraph (g) is added.
5. The added and revised provisions read as follows:

§ 1.1275–4 Contingent payments.

(a) *Applicability.* The rules of this section apply to debt instruments that provide for one or more contingent payments (as defined in paragraph (b) of this section). Contingent payments under a debt instrument subject to section 1274 are governed by the provisions of paragraphs (c) or (d) of this section, whichever is applicable. Contingent payments under a debt instrument issued for cash or publicly traded property are governed by the provisions of paragraphs (e), (f), or (g) of this section, whichever is applicable. Except as otherwise provided in paragraph (g) of this section, nothing in this section or in the regulations under sections 1271 through 1274 shall influence whether an instrument calling for contingent payments is properly treated as debt, equity, or an option, future, forward or other financial instrument, or whether such instrument evidences a valid indebtedness for Federal income tax purposes. An instrument shall not be subject to the rules of this section merely because the instrument contains a right to convert the instrument into stock or another debt instrument of the issuer. An instrument also shall not be subject to the rules of this section merely because the instrument is subject to a put or call option or an option to extend. See § 1.1272–1(f)(4) for rules governing such instruments.

* * * * *

(e) *Certain debt instruments issued for cash or publicly traded property*—(1) *Separation into noncontingent and contingent components.* * * * Notwithstanding the preceding sentence, the rules of paragraph (g) of this section apply to a contingent instrument within the meaning of paragraph (g)(1) of this section.

* * * * *

(f) *Certain debt instruments issued for cash or publicly traded property that provide for contingent principal*—(1) *In general.* * * * Notwithstanding the preceding sentence, the Commissioner may apply the rules of paragraph (g) of this section to an instrument that would be subject to those rules but for the fact that the issue price of the instrument exceeds the total noncontingent payments by an insubstantial amount.

* * * * *

(g) *Certain debt instruments issued on or after February 20, 1991, for cash or publicly traded property that provide for contingent payments determined by reference to publicly traded property*—(1) *Applicability.* This paragraph applies to a debt instrument (a "contingent instrument") that is issued on or after February 20, 1991, for cash or publicly traded property, that provides for noncontingent payments equal to or greater than the issue price (regardless of whether designated as interest or principal), and that provides for one or more contingent payments determined, in whole or in part, by reference to the value of publicly traded stock, securities, commodities, or other publicly traded property.

(2) *Separation into noncontingent and contingent components.* In the case of a contingent instrument, the noncontingent payments shall be subject

to the rules described in paragraph (g)(3) of this section, and the contingent payments shall be subject to the rules described in paragraph (g)(4) of this section.

(3) *Treatment of noncontingent payments.* The payments to which paragraph (g)(3) of this section applies shall be treated under sections 1271 through 1275 and the regulations thereunder as a separate noncontingent debt instrument. Unless the rights to the contingent payments are substantially equivalent to publicly traded property, the issue price of this separate noncontingent debt instrument is determined in the same manner as if the separate noncontingent debt instrument were a debt instrument issued as part of an investment unit to which § 1.1273–2(d)(2)(iv) applied. The stated redemption price at maturity is determined under § 1.1273–1(b), and the yield is determined under § 1.1272–1(f), all without reference to the contingent payments. The *de minimis* rule of section 1273(a)(3) and § 1.1273–1(a)(3) shall not apply to the noncontingent debt instrument.

(4) *Treatment of contingent payments*—(i) *In general.* The payments to which paragraph (g)(4) of this section applies shall be treated in accordance with their economic substance as payments pursuant to one or more options or other property rights. Unless the rights to the contingent payments are substantially equivalent to publicly traded property, the price of the rights is determined by substracting the issue price of the separate noncontingent debt instrument from the issue price of the contingent instrument.

(ii) *Certain delayed contingent payments*—(A) *In general.* In the case in which a contingent payment is not due within six months of the date on which the amount of the payment becomes fixed, the parties shall be treated as if the borrower had issued a separate debt instrument on the date the amount of the payment becomes fixed, maturing on the date that the payment is due. This separate debt instrument shall be treated as a debt instrument to which section 1274 applies. The stated principal amount of this separate debt instrument shall be the amount of the payment that becomes fixed. An amount equal to the issue price of the separate debt instrument shall be accounted for as if an amount equal to such issue price had been paid by the borrower to the lender on the date that the amount of the payment becomes fixed. To determine the issue price of the separate debt instrument, all payments under the debt instrument shall be discounted from the date that the payment is due to the date that the payment becomes fixed. The amount of a contingent payment shall be treated as fixed even if, once fixed, the payment is payable in the future together with payments that are subject to further contingencies.

(B) *Special rules.* In applying section 1274 to a separate debt instrument described in paragraph (g)(4)(ii) of this section—

(*1*) The test rate shall be based on the term of the contingent instrument, and

(*2*) Any provision calling for a test rate other than the applicable Federal rate shall apply if, and only if, the provision would have been applied to the contingent payment instrument if it had been issued for nonpublicly traded property.

(5) *Example.* The provisions of paragraph (g) of this section may be illustrated by the following example:

Example. (i) On April 1, 1991, *A* purchases *B*'s contingent payment instrument at original issue for cash of $1,000,000. The instrument, with a term of five years, calls for a noncontingent payment at maturity of $1,000,000 and a contingent payment at maturity equal to $1,000,000 multiplied by the percentage increase, if any, in a nationally known composite price index of publicly traded stocks ("the Index") over the term of the instrument. Assume that there is no publicly traded property that is substantially equivalent to the right to the contingent payment. Also assume that the mid-term, applicable Federal rate with semiannual compounding for April 1991 is 8.15 percent and that the parties agree in accordance with the rules of § 1.1273–2(d)(2)(iv) to discount the separate noncontingent debt instrument at 9 percent compounded semiannually.

(ii) Under paragraph (g)(3) of this section, the noncontingent payment of $1,000,000 at maturity is treated under sections 1271 through 1275 and the regulations thereunder as a separate noncontingent debt instrument. Based on a discount rate of 9 percent, compounded semiannually, the issue price of the separate noncontingent debt instrument equals $643,927.68. The stated redemption price at maturity (under § 1.1273–1(b)(1)) is $1,000,000.

(iii) Under paragraph (g)(4) of this section, the contingent payment is treated in accordance with its economic substance. In this case, the right to the contingent payment is equivalent to a cash settlement option on the Index. The portion of the $1,000,000 issue price that is allocated to the contingent component equals $356,072.32 ($1,000,000—$643,927.68). The contingent payment is treated in the same manner as a payment pursuant to a cash settlement option on the Index.

* * * * *

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91–4676 Filed 2–26–91; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 12

[CGD 84–088]

RIN 2115–AC02

Certification of Seamen

AGENCY: Coast Guard, DOT.

ACTION: Notice of withdrawal.

SUMMARY: On February 4, 1985, the Coast Guard published in the Federal Register (50 FR 4875) an advance notice of proposed rulemaking (ANPRM) requesting comments on a revision to title 46, Code of Federal Regulations, part 12, Certification of Seamen. The Coast Guard is now withdrawing this rulemaking (CGD 84–088) because: (1) Several of the items to be covered by the revision have subsequently been accomplished in individual rulemakings, and; (2) since the publication of the ANPRM, Congress enacted the Oil Pollution Act of 1990 (OPA), which requires regulatory reform of other subjects addressed in the ANPRM.

DATES: This withdrawal is effective on February 28, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Mack C. Gould, Merchant Vessel Personnel Division, (202) 267–0224.

SUPPLEMENTARY INFORMATION: In the ANPRM, it was noted that changes needed to be made to 46 CFR part 12 for several reasons: To account for amendments to the statutes; to revise physical standards; to provide for drug and alcohol testing; to establish basic training requirements and qualifications for entry level mariners; to require firefighting training for mariners; to establish Able Seaman—Sail and Able Seaman—Fishing Industry endorsements; and to establish Mobile Offshore Drilling Unit (MODU) regulations for unlicensed personnel.

Since the publication of the ANPRM, several of these changes have been the subject of other rulemakings, including drug and alcohol testing requirements and firefighting training. In addition, the OPA mandates certain changes to the regulations, including renewable Certificates of Registry and Merchant Mariner Documents (MMDs), access to the National Driver Register, and foreign vessel manning standards. The remaining changes intended in the ANPRM which are not completed by a separate rulemaking and are not affected by OPA will be addressed in a forthcoming rulemaking regarding 46 CFR part 12. These changes include: A

general updating of the regulations with new U.S. Code citations and use of current terminology; revision of the minimum physical standards for seamen, including requiring retention physical examinations; establishment of basic training and qualification requirements for entry rating MMDs; updating the Qualified Member of Engine Department (QMED) rating to more accurately reflect current technology and the needs of the industry; establishment of Able Seaman—Sail and Able Seaman—Fishing Industry endorsements; establishment of MODU regulations for unlicensed personnel; issuance of Temporary Certificates of Service/Identification; and issuance of entry rating MMDs to foreign seamen.

Dated: February 21, 1991.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security, and Environmental Protection.

[FR Doc. 91-4740 Filed 2-27-91; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CC Docket No. 90-623, DA 91-177]

Computer III Remand Proceedings

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Common Carrier Bureau granted requests for extension of time to file comments in CC Docket No. 90-623. Because of the complex issues raised by the Commission's Notice of Proposed Rulemaking and the states' interest in participating in this proceeding, interested parties have an additional twenty-one days to file comments. Interested parties are to file comments by March 8, 1991, and reply comments by April 8, 1991.

DATES: Comments must be received on or before March 8, 1991; replies must be received on or before April 8, 1991.

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

FOR FURTHER INFORMATION CONTACT: Melissa Newman, Policy and Program Planning Division, Common Carrier Bureau, (202) 632-9342.

SUPPLEMENTARY INFORMATION:

Order

Adopted: February 13, 1991.
Released: February 13, 1991.

By the Chief, Common Carrier Bureau:

In the Matter of Computer III Remand Proceedings: Bell Operating Company Safeguards; and Tier 1 Local Exchange Company Safeguards.

1. The National Association of Regulatory Utility Commissioners (NARUC) and the Pennsylvania Public Utility Commission (Pennsylvania PUC) have requested an additional twenty-eight days for filing comments in this proceeding.[1] NARUC states that any expression of intent by the Federal Communications Commission to preempt state regulation affects the ability of NARUC's members to carry out their statutory obligations. NARUC states that an extension would enable it to develop a formal consensus position at its winter meetings, during the last week of February. The Pennsylvania PUC also states that any decision to preempt state regulation would have an impact on its ability to carry out its statutory responsibilities. The Pennsylvania PUC states that it is conducting a proceeding to determine whether to require telephone companies to file tariffs for the provision of enhanced services, and whether nonstructural or structural safeguards are appropriate for the provision of enhanced services. Both NARUC and the Pennsylvania PUC states that no party will be significantly prejudiced by the delay.

2. While we do not routinely grant extensions of time, we believe that in this case, there is good cause for a limited extension.[2] The issues raised by the Commission's Notice of Proposed Rulemaking are complex, and because the Commission has proposed to preempt certain types of state regulation, the states have a clear interest in participating in this proceeding. However, we believe that expeditious resolution of this proceeding is also in the public interest. We conclude that a twenty-one day extension of time to file comments will be sufficient to permit full participation by the states and the development of a complete record, without unnecessarily delaying a Commission decision in this proceeding.

3. *Accordingly, It is ordered*, that the requests for extension of time are granted to the extent described herein. Interested parties are to file comments by March 8, 1991, and reply comments by April 8, 1991.[3]

Federal Communications Commission.

Richard M. Firestone,

Chief, Common Carrier Bureau.

[FR Doc. 91-4646 Filed 2-27-91; 8:45 am]

BILLING CODE 6712-01-M

[1] Request for an Extension of Time to File Comments by the National Association of Regulatory Utility Commission, filed on February 5, 1991; Request for an Extension of Time to File Comments by the Pennsylvania Public Utility Commission, filed February 11, 1991. The Commission established February 15, 1991 as the filing date for comments and March 18, 1991 for replies in the Notice of Proposed Rulemaking, CC Docket No. 90-623, 6 FCC Rcd 174 (1990).

[2] Section 1.46(a) of the Commission's Rules, 47 CFR 1.46(a).

[3] This action is taken pursuant to sections 4(j) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. 154(j) and 155(c), and authority delegated thereunder pursuant to §§ 0.91 and 0.291 of the Commission's Rules, 47 CFR 0.91 and 0.291.

47 CFR Part 73

[MM Docket No. 91-26; RM-7585]

Radio Broadcasting Services; Hempstead, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Farmers Communications asking the Commission to allot Channel 287A to Hempstead, Texas, as that community's first local service. The coordinates for the proposed allotment are 30-11-25 and 96-10-20, with a site restriction of 13.9 kilometers (8.6 miles) northwest to avoid a short-spacing to Station KHCB(FM), Channel 289C, Houston, Texas.

DATES: Comments must be filed on or before April 18, 1991, and reply comments on or before May 3, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Shaun A. Maher, Esq., Blair, Joyce & Silva, 1825 K Street, NW., Suite 510, Washington, DC 20006. (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Fawn E. Wilderson, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-26, adopted February 5, 1991, and released February 25, 1991.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service,

(202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this preceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division Mass Media Bureau.

[FR Doc. 91–4779 Filed 2–27–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 91–27; RM–7549]

Radio Broadcasting Services; Castle Rock, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Cowlitz Broadcasting Co. requesting the Commission to allot Channel 296C3 to Castle Rock, Washington, as that community's first local FM service. Channel 296C3 an be allotted to Castle Rock with a site restriction of 10.4 kilometers (6.5 miles) North at coordinates 46–22–10 and 122–55–29. The site restriction will avoid short-spacings to the site specified in the construction permit for Station KMXI, Channel 294C, Lake Oswego, Oregon, and to Channel 296C1, Sweet Home, Oregon. Since Castle Rock is located within 320 kilometers (200 miles) of the Canadian border, we have requested the concurrence of the Canadian government in this allotment.

DATES: Comments must be filed on or before April 18, 1991, and reply comments on or before May 3, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Cowlitz Broadcasting Co., c/o Victoria A. Lord, 13313 SE 208th Street, Kent, Washington 98042 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Fawn E. Wilderson, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–27, adopted February 4, 1991, and released February 25, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–4780 Filed 2–27–91; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 580

RIN 2127–AC42

[Docket No. 87–09; Notice 14]

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking and withdrawal of prior notice of proposed rulemaking.

SUMMARY: This notice withdraws the Notice of Proposed Rulemaking issued on August 27, 1990. This notice proposes to amend § 580.3 to add a definition of "original secure power of attorney." This notice further proposes to amend § 580.13(f) to require the States to retain the powers of attorney and titles submitted to them in accordance with that section. In addition, this notice proposes to amend § 580.11 to allow a State to petition for approval of alternate procedures to the § 580.13(f) requirement. The petition would have to set forth the requirements in effect in the petitioning State, including a copy of the applicable State law or regulation and would have to explain how the requirements are consistent with the Motor Vehicle Information and Cost Savings Act. Notice of grant or denial of the petition would be issued by the Office of the Chief Counsel to the petitioner.

This notice also proposes to amend § 580.5 to require that the odometer disclosure made by the titled owner of a vehicle be made on the title document itself, and not on a reassignment document.

This notice also proposes additional clarifying amendments.

This notice is being issued pursuant to an amendment to the Motor Vehicle Information and Cost Savings Act.

DATES: Comments on this NPRM are due no later than April 1, 1991.

ADDRESSES: Written comments should refer to the docket number of this notice and should be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC, 20590. (Docket hours are 9:30 am to 4 pm).

FOR FURTHER INFORMATION CONTACT: Mattie Cohan, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590 (202–366–1834).

SUPPLEMENTARY INFORMATION:

Background

To implement the Truth in Mileage Act of 1986, Public Law 99–579, and to make some needed changes in the Federal odometer regulations, the National Highway Traffic Safety Administration (NHTSA) published a notice of proposed rulemaking (NPRM) on July 17, 1987. 52 FR 27022 (1987). The agency received numerous comments on the NPRM representing the opinions of new and used car dealers, auto auctions, leasing companies, State motor vehicle administrators, and enforcement and consumer protection agencies. Each of the comments was considered, and a final rule was published on August 5, 1988. 53 FR 29464 (1988).

On October 31, 1988, Congress enacted the Pipeline Safety Reauthorization Act of 1988, Public Law 100–561. Section 401 of that Act amends section 408(d)(1) of the Motor Vehicle Information and Cost Savings Act (MVICSA), 15 U.S.C. 1988(d)(1) to authorize the use of secure powers of attorney in connection with the required mileage disclosure under certain circumstances. The law directed the agency to prescribe the form and content of the power of attorney and to establish reasonable conditions for its use by the transferor "consistent with this Act and the need to facilitate enforcement thereof.' It also requires NHTSA's rule to provide for the retention of a copy of the power of attorney form by the person exercising it and to ensure that the person granted the power of attorney completes the disclosure on the title consistent with the disclosure on the power of attorney form. Finally, the statute provided that the original secure power of attorney form must be submitted back to the state by the person exercising the power of attorney.

To implement these provisions, NHTSA issued an interim final rule/request for comments on March 8, 1989 (54 FR 9809). The interim final rule permitted an individual, in limited instances when the title of the vehicle that is being transferred is physically held by a lienholder, to sign the odometer disclosure as both transferor and transferee through the use of a secure power of attorney form, issued by a State. When such vehicles are resold, the interim final rule allowed the transferee (in the second transaction) to use the same power of attorney form to authorize his transferor (the dealer who purchased the car) to sign the disclosure on the title document on the transferee's behalf.

Several provisions of the interim final rule prompted vigorous comment. In particular, the National Automobile Dealers Association (NADA) and the National Independent Automobile Dealers Association (NIADA) expressed dissatisfaction with three aspects of the interim final rule. First, they criticized the fact that the interim final rule did not allow for use of secure powers of attorney in situations in which the customer's title is not present because the customer has lost or misplaced the title. Second, they opposed the requirement that the person exercising the power of attorney certify that the title revealed no mileage discrepancies. Third, they objected to the requirement that title applications must accompany secure power of attorney forms when they are submitted back to the State.

After careful consideration of the comments received, NHTSA decided to amend some of the provisions in the interim final rule. On August 30, 1989, NHTSA published a final rule which allows secure powers of attorney to be used in lost title situations, as well as in situations where the title is physically held by a lienholder. In addition, while retaining the certification requirement, NHTSA changed the wording of the certification to reflect more clearly the intent of the requirement (that the individual exercising the power of attorney check to see that the mileage appearing on the title is lower than that disclosed on the power of attorney form). The agency also limited the certification requirement to those situations in which the power of attorney has been used for both the first and second sale transactions. NHTSA declined, however, to alter the requirement that title applications must be filed with power of attorney forms.

The agency received four petitions for reconsideration of the August 1989 final rule. These petitions requested that NHTSA reconsider the provision of the final rule that requires that title applications accompany power of attorney forms when those forms are returned to the State. In addition, Senator J. James Exon, Representatives Bob Whittaker and Norman F. Lent, and Representative Robert H. Michel sent letters to the Department of Transportation expressing the same sentiments as the petitioners. On February 22, 1990, the agency denied these petitions for reconsideration. 55 FR 6257.

The Florida Division of Motor Vehicles filed a petition with the agency on June 5, 1990, seeking approval for a procedure whereby dealers exercising secure powers of attorney would, in lieu of submitting them back to the State with a title application, submit them with copies of the front and back of the old titles only, and the States would retain these copies. Since the odometer disclosure requirements do not contain any mechanism to approve an alternate procedure such as the one proposed by Florida, the agency interpreted Florida's petition as a petition for rulemaking to create such a mechanism for approval. The agency granted Florida's petition for rulemaking on July 23, 1990. That rulemaking process was initiated on August 27, 1990, with the issuance of an NPRM. 55 FR 34941.

While the agency was reviewing the comments submitted in response to the NPRM, Congress passed the Independent Safety Board Act Amendments of 1990, Pubic Law 101–641. That Act amends Section 408(d)(1) of the MVICSA, which authorizes the use of secure powers of attorney in connection with the required mileage disclosure under certain circumstances. Like the PSRA amendment, the new law directs the agency to prescribe the form and content of the power of the attorney/disclosure document and to establish reasonable conditions for its use by the transferor "consistent with this Act and the need to facilitate enforcement thereof," requires NHTSA's rule to provide for the retention of a copy of the power of attorney form by the person exercising it, and provides that the original secure power of attorney form must be submitted back to the State by the person exercising the power of attorney. In addition, the new law permits the agency to require that the State retain the power of attorney for an approrpiate period or that the State retain the power of attorney for an appropriate period or that the State adopt alternative measures consistent with the purposes of the Act. Finally, under the new law, the agency may not require that a vehicle be titled in the State in which the power of attorney was issued.

Definition of "Original Secure Power of Attorney"

The MVISCA specifies that the person exercising the power of attorney for mileage disclosure purposes must submit the "original" power of attorney form back to the issuing State. When the agency issued its rule implementing this provision of the statute it seemed clear enough that the "original" to which Congress was referring was the form issued by the State on secure paper and that Congress meant to exclude photocopies or other non-secure copies. This is because it is important for the secure copy to get back to the issuing State as soon as possible so that any alterations can be quickly detected.

Most, if not all, of the States that have chosen to make secure powers of attorney available have chosen to issue multicopy forms with a top, secure copy and a number of attached additional copies which may or may not be on secure paper. The question has arisen as to which, if any, of the attached additional copies may be considered "originals." In this context it is approriate to consider adding a definition of "original power of attorney" to clear up any confusion which might exist.

Accordingly, we propose to amend § 580.3 to define "original power of

attorney," for a single copy forms, as the secure document issued by the State, and, for multicopy forms, as the secure document and any attached copies which are also printed on secured paper.

Retention of Powers of Attorney by the State

In instituting the requirement that an executed power of attorney be submitted back to the State with the old title and a title application, NHTSA was seeking to enhance the paper trail by ensuring that a copy of the power of attorney form, independent of the dealer and customer copies, would exist and be available in State records. It was suggested to NHTSA that this result could be reached by NHTSA requiring the States to retain the submitted powers of attorney and titles. NHTSA considered, but ultimately rejected this option because the MVICSA, at that time, did not authorize the agency to order the States to alter their record retention methods. Instead, because we were aware that the States would retain copies of documents submitted with title applications, we considered it wiser to make use of those existing State practices to meet our enforcement needs.

The new law, however, expressly prohibits NHTSA from requiring title applications to be filed with powers of attorney, and expressly grants NHTSA the authority to require the States to retain submitted powers of attorney. We are, therefore, proposing to amend § 580.13(f) to eliminate the requirement that title applications accompany the powers of attorney submitted back to the State by the persons exercising them. In accordance with the statute we are retaining the requirement that the person exercising the secure power of attorney submit the original power of attorney form back to the issuing State. We further propose to amend § 580.13(f) to require a State which receives an executed power of attorney and transferor's title in accordance with that section, to retain those documents for five years. Under the proposed amendment, the State may retain either the original copies it receives or a photostat, carbon or other facsimile copy. This includes any media by which such information may be stored, provided there is no loss of information. This requirement is intended to parallel the record retention requirement imposed on dealers, distributors and lessors.

Approval of Alternate Requirements

Section 408(f)(2) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1988(f)(2)) provides for the administrative approval of alternate odometer disclosure requirements submitted by a State to the extent that such alternate requirements are consistent with the purposes of Act. A mechanism for such adminstrative approval of alternate disclosure requirements is incorporated into the regulation at § 580.11. Specifically, § 580.11 permits States to "petition NHTSA for approval of disclosure requirements which differ from the disclosure requirements of §§ 580.5 and 580.7 of ths part."

The new law contemplates the approval by NHTSA of alternate State methods to those incorporated into § 580.13(f), provided those alternate methods are consistent with the purposes of the Act. Section 580.11, however, is very specific in allowing for the approval of alternatives to §§ 580.5 and 580.7, only. There is, under the current regulation, no mechanism whereby the agency could grant a State's request for approval of an alternate to compliance with the requirements of § 580.13(f).

In light of the new law we are withdrawing the Notice of Proposed Rulemaking issued on August 27, 1990. We believe it would be appropriate to allow commenters to consider this issue in conjunction with the other proposals contained herein. Accordingly, we are proposing to amend § 580.11 to allow a State to petition for approval of alternate requirements to those contained in § 580.13(f). Under this proposal, a State could submit a petition to the Office of the Chief Counsel for approval. Such petitions would have to set forth the requirements in effect in the petitioning State, including a copy of the applicable State law or regulation and would have to explain how the requirements are consistent with the MVICSA. Notice of grant or denial of the petition would be issued by the Office of the Chief Counsel to the petitioner without further notice in the Federal Register.

Use of Reassignment Forms By Titled Owners

Another issue that the agency had not previously considered ripe for regulation is the practice of permitting titled owners to transfer their vehicles on reassignment forms, allowing them to skip the "assignment by owner" block on the title. We considered such a practice unlikely because in many, if not most, States it has been illegal for a titled owner to transfer the vehicle on a reassignment form, rather than on the title itself. It has come to our attention, however, that in increasing number of States are permitting or are planning to permit titled owners to transfer their vehicles on reassignment forms, allowing them to skip the "assignment by owner" block on the title. The rationale behind this practice is to allow individuals and dealers to avoid the power of attorney requirements.

Underlying the Truth in Mileage Act and the implementing regulations is the conviction that putting odometer disclosures directly on titles and having purchasers see the titles to the vehicles they purchase will result in a decrease in costly odometer fraud. Although use of the secure power of attorney for mileage disclosure interferes with these purposes, the use of the power of attorney is structured so as to reduce the possibility of fraud, and to allow consumers access to mileage and title information. The transactions described above thwart the purposes of the Federal law without providing the protection against fraud afforded by the secure power of attorney.

Accordingly, we propose to amend § 580.5 to require a transferor in whose name the vehicle is titled to make his or her odometer disclosure on the vehicle's title, and not on a reassignment document.

Clarification of Section 580.11(c)

In reviewing § 580.11 the agency has determined that the language of paragraph (c) of that section was unclear. Specifically, the use of the term "extension" in the sentence "The effect of a grant of a petition is to relieve a State from responsibility to conform the State motor vehicle titles with §§ 580.5 and 580.7 of this part during the time of the extension." could cause some confusion. The effect of a grant of such a petition would be to relieve a State from responsibility to conform its titles with §§ 580.5 and 580.7 for as long as the approved alternate disclosure requirements were in effect in that State, and the term "extension" in that sentence should not be confused with any extension a State may have in bringing its titles into conformance with the requirements of this part. Accordingly, to avoid any confusion, we are proposing to amend that sentence to read as follows: "The effect of the grant of a petition is to relieve a State from responsibility to conform the State disclosure requirements with §§ 580.5, 580.7 or § 580.13(f) for as long as the approved alternate disclosure requirements remain in effect in that State."

Federalism Assessment

This action has been analyzed in accordance with the principles and

criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposed rule may result in States adopting more costly new recordkeeping procedures; however, these costs could be offset by the lowered cost resulting from the issuance of fewer titles than the States would have to issue under the current rule.

Regulatory Impacts

A. Costs and Benefits to Dealers, States and Consumers

NHTSA has analyzed this rule and determined that it is neither "major" within the meaning of Executive Order 12291, nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. A regulatory evaluation has been prepared analyzing the impacts of the proposed rule and has been placed in Docket 87–09, Notice 14. Any interested person may obtain a copy of this regulatory evaluation by writing to the NHTSA Docket Section, room 5109, 400 Seventh Street SW., Washington, DC, 20590, or by calling the Docket Section at (202) 366–4949. Summarizing this evaluation, this NPRM does not impose any costs on dealers or distributors. Any costs to the States may be offset by savings the States will achieve from the issuance of fewer titles than are required under the current rule.

B. Small Business Impacts

The agency has also considered the impacts of this rule in relation to the Regulatory Flexibility Act. For the reasons discussed above, I certify that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared.

C. Environmental Impacts

NHTSA has considered the environmental implications of this rule, in accordance with the National Environmental Policy Act, and determined that it will not significantly affect the human environment. Accordingly, an environmental impact statement has not been prepared.

D. Paperwork Reduction Act

The Office of Management and Budget (OMB) has already approved NHTSA's information collection requirements that require consumer, dealers, distributors, lessors and auction companies to disclose and/or retain mileage information. (OMB2127–0047). This NPRM does not propose any new information collection requirements as that term is defined by OMB in 5 CFR part 1320.

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested, but not required, that ten copies be submitted.

All comments must not exceed fifteen pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the fifteen page limit. This limitation is to encourage commenters to detail their preliminary arguments in a concise fashion.

All comments received before the close of the business on the comment closing date listed above will be considered and will be available for examination in the docket both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration will be considered suggestions for further rulemaking action. The agency will continue to file relevant information as it becomes available. It is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments by the docket, should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 580

Odometers.

Withdrawal of Prior Notice

The previously issued notice of proposed rulemaking, 55 FR 34941, is hereby withdrawn.

In consideration of the foregoing, 49 CFR part 580 would be amended as follows:

PART 580—[AMENDED]

The authority citation for 49 CFR part 580 continues to read as follows:

Authority: 15 U.S.C. 1988; delegation of authority at 49 CFR 1.50(f) and 501.8(e)(1).

§ 580.3 [Amended]

1. In § 580.3 the following would be added between the definitions of "mileage" and "secure printing process or other secure process:"

* * * * *

Original power of attorney means, for single copy forms, the document set forth by secure process which is issued by the State, and, for multicopy forms, any and all copies set forth by secure process which are issued by the State.

2. In § 580.5, paragraph (c) would be revised as follows:

§ 5805. Disclosure of odometer information.

* * * * *

(c) In connection with the transfer of ownership of a motor vehicle, each transfer shall disclose the mileage to the transferee in writing on the title or on the document being used to reassign the title. In the case of a transferor in whose name the vehicle is titled, the transferor shall disclose the mileage on the title, and not on a reassignment document. This written disclosure must be signed by the transferor, including the printed name. In connection with the transfer of ownership of a motor vehicle in which more than one person is a transferor, only one transferor need sign the written disclosure. In addition to the signature and printed name of the transferor, the written disclosure must contain the following information:

* * * * *

3. In § 580.11, paragraphs (a) and (c) would be revised as follows:

§ 580.11 Petition for approval of alternate disclosure requirements.

(a) A State may petition NHTSA for approval of disclosure requirements which differ from the disclosure requirements of §§ 580.5, 580.7, or § 580.13(f) of this part.

* * * * *

(c) Notice of either a grant or denial of a petition for approval of alternate motor vehicle disclosure requirements is issued to the petitioner. The effect of the grant of a petition is to relieve a State from responsibility to conform the State disclosure requirements with §§ 580.5, 580.7, or § 580.13(f), as applicable, for as long as the approved alternate disclosure requirements remain in effect in that State. The effect of a denial is to require a State to conform to the requirements of §§ 580.5, 580.7 or § 580.13(f), as applicable, of this part until such time as the NHTSA approves any alternate motor vehicle disclosure requirements.

4. In § 580.13, paragraph (f) would be revised as follows:

§ 580.13 Disclosure of odometer information by power of attorney.

* * * * *

(f) Upon receipt of the transferor's title, the transferee shall complete the space for mileage disclosure on the title exactly as the mileage was disclosed by

the transferor on the power of attorney form. The transferee shall submit the original power of attorney form to the State that issued it, with a copy of the transferor's title. The State shall retain the power of attorney form and title document submitted to it for five years. If the mileage disclosed on the power of attorney form is lower than the mileage appearing on the title, the power of attorney is void and the dealer shall not complete the mileage disclosure on the title.

Issued on: February 21, 1991.

Paul Jackson Rice,

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 91–4570 Filed 2–27–91; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 910224–1024]

Groundfish of the Gulf of Alaska

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

ACTION: Proposed rule; request for comments.

SUMMARY: NOAA proposes to delay the start of the directed hook-and-line sablefish fishing season until May 15. This action is necessary to reduce the amount of Pacific halibut bycatch that would otherwise occur in this fishery. By reducing Pacific halibut bycatch, this proposed rule is intended to allow fuller utilization of the sablefish optimum yield, thereby promoting the goals and objectives of the Fishery Management Plan for the Gulf of Alaska Groundfish Fishery (FMP).

DATES: Comments are invited until March 15, 1991.

ADDRESSES: Comments may be sent to Dale R. Evans, Chief, Fishery Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802. Copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) may be obtained from the same address. Comments on the environmental assessment are particularly requested.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the Exclusive Economic Zone in the Gulf of Alaska are managed under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) and was approved by the Secretary of Commerce (Secretary) under the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP is implemented by regulations for the foreign fishery at 50 CFR part 611 and for the U.S. fishery at 50 CFR part 672.

At times, amendments to the FMP and/or its implementing regulations are necessary for conservation and management of the groundfish fisheries. The structure of the FMP provides for changes to fishing seasons by amending regulations (regulatory amendments) without accompanying amendments to the FMP (section 4.3.3).

At its December 3–7, 1990 meeting, the Council recommended that a regulatory amendment be implemented that would change the season for the hook-and-line directed sablefish fishery by delaying the starting date until May 15 instead of April 1. The purpose of the proposed season delay is to reduce halibut bycatch, which otherwise occurs at high rates in the sablefish hook-and-line fishery.

During the 1990 fishing year, hook-and-line fisheries in the Gulf of Alaska reached their assigned share of the prohibited species catch (PSC) mortality limit for Pacific halibut. When the PSC assignment was reached, further fishing with hook-and-line gear was prohibited. One of the hook-and-line fisheries experiencing halibut bycatch was directed at sablefish. Sablefish is a groundfish species occurring in deep water. Because the season for sablefish is conducted during a time of the year when Pacific halibut also occur in deep water, Pacific halibut are frequently caught as bycatch in the sablefish fishery.

Bycatches of Pacific halibut in the sablefish fishery are directly related to the life histories of these two species. During the winter and early spring months, the depth distributions of sablefish and halibut overlap. March appears to be a transitional period for halibut as they begin moving to shallow waters. By May, many adult halibut frequent shallow water, less than 100 fathoms, where they reside through the summer until September. In November, halibut return to deep water where they again are found with adult sablefish until March of the following year. When the sablefish hook-and-line fishery starts on April 1, halibut are still found in deep water where adult-size sablefish are fished, usually between 200 and 400 fathoms. Therefore, halibut are caught as bycatch in the sablefish hook-and-line fishery. These bycatches of halibut in the sablefish hook-and-line fishery reduce potential economic return in the halibut fishery, and result in premature groundfish fishery closures.

Prior to the 1990 fishing year, no measures were in place to constrain halibut bycatch by hook-and-line gear, although PSC mortality limits have been imposed on trawl gear since 1986. When the PSC limit assigned to trawl gear was reached, no further trawling with other than pelagic trawl gear was allowed. In 1990, a PSC limit of 750 metric tons (mt) also was imposed on hook-and-line gear. When the PSC limit assigned to hook-and-line gear was reached, further fishing and hook-and-line gear was prohibited.

The hook-and-line fishery for groundfish, expect sablefish, starts January 1. The starting date of the sablefish hook-and-line directed fishery is April 1. Fishing commences actively on that date and continues until shares of the sablefish total allowable catch (TAC) assigned to hook-and-line gear are met. Fishing effort is usually distributed such that hook-and-line shares are reached first in the Southeast Outside/East Yakutat (Southeast) and West Yakutat Districts of the Eastern Regulatory Area, followed by the Central Regulatory Area, and then the Western Regulatory Area.

For example, in 1990, respective directed fishery closure dates were as follows: Southeast District—April 20; West Yakutat District—April 16; Central Regulatory Area—May 29; and the Western Regulatory Area—May 29. In the Central Regulatory Area, all of the sablefish hook-and-line share was reached. In the Western Regulatory Area, which was closed when the halibut PSC hook-and-line gear share was reached, 1,497 mt of the sablefish hook-and-line share where not harvested.

Hook-and-line fisheries in the Gulf of Alaska mainly target on sablefish and Pacific cod. Other groundfish species may be caught. Halibut bycatches were especially high in the sablefish fishery.

For example, summarizing from the EA/RIR/IRFA prepared for this action, the amount of halibut mortality attributed to the sablefish fishery was about 94 percent of the total halibut bycatch mortality in the hood-and-line fishery, even though the amount of sablefish harvested in the hook-and-line fishery represented a relatively smaller

amount—about 79 percent of the hook-and-line groundfish catch of 30,430 mt.

Halibut bycatch rates by regulatory area showed declines during May compared to April in the Central and Western Regulatory Areas. No comparisons of halibut bycatch rates between April and May can be made for the Eastern Regulatory Area, because the fishery closed in that area in April. The overall Gulf of Alaska halibut bycatch rate declined from 3497 kg/mt in April to 244.5 kg/mt in May.

Together, fishing activity in statistical areas 630 and 650 accounted for 79 percent of the total halibut mortality in the hook-and-line fishery. Because the hook-and-line fishery for sablefish harvested all the amounts available to hook-and-line gear in the Eastern and Central Regulatory Areas prior to the halibut PSC limit for hook-and-line gear being reached on May 29, 1990, no amounts of sablefish were foregone in those areas. However, in the Western Regulatory Area, 1,497 mt of sablefish remained unharvested. Expressed in pounds and using a recovery rate of 0.63 for eastern cut product, the resulting shortfall is 2,078,614 pounds. At $1.10 per pound, fishermen probably lost approximately $2.8 million in gross exvessel revenue.

In reviewing this issue, the Council heard testimony from industry representatives suggesting that delaying the sablefish season starting date would allow halibut time to migrate into shallower water, thereby partly escaping the sablefish fishery. Declining halibut bycatch rates from April through May suggest that additional halibut could excape the sablefish fishery. Therefore, delaying the season should reduce the halibut bycatch rate and total bycatch of halibut in the sablefish hook-and-line fishery. Lower bycatch rates in this fishery would increase the fisheries' opportunity to harvest the available sablefish hook-and-line share, and make more halibut available to support other hook-and-line fisheries, thereby promoting greater groundfish harvests, including sablefish.

The Secretary has reviewed the Council's recommendations and hereby proposes to delay the sablefish season from April 1 until May 15.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this proposed rule is necessary for the conservation and management of the groundfish fishery off Alaska and that it is consistent with the Magnuson Act and other applicable law.

The Alaska Region, NMFS, prepared an environmental assessment as part of the EA/RIR/IRFA for this proposed rule. A copy of the EA/RIR/IRFA is available from the Regional Director at the previously cited address.

The Assistant Administrator initially determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the socioeconomic impacts discussed in the EA/RIR/IRFA prepared by the Alaska Region, NMFS.

An initial regulatory flexibility analysis was prepared as part of the EA/RIR/IRFA in accordance with section 603 of the Regulatory Flexibility Act. A summary of this analysis follows:

[A May 15 starting date] is superior to April 1 with respect to reducing halibut bycatch rates and minimizing conflicts with other fisheries, especially the salmon fishery. If the first halibut season were to open before the sablefish season, prospecting for halibut would not occur. Further, halibut abundance would be reduced by the halibut fishery, which could reduce halibut bycatch in the subsequent sablefish fishery. Although the Eastern Regulatory Area typically closes after about three weeks, the Central and Western areas usually close after about six weeks or longer. Because salmon fisheries start in late June, a sablefish starting date in June could conflict with the Southeast Alaska salmon fishery. Any sablefish season starting date after about the middle of May probably would conflict with salmon fisheries in the Central and Western areas. In 1990, 237 out of 591 vessels that landed sablefish also landed salmon. Most of these vessels fish salmon in Southeast Alaska. Weather should be improved in May relative to early April, resulting in greater vessel safety.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

NOAA has determined that this proposed rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 672

Fisheries.

Dated: February 22, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, part 672 is proposed to be amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority of citation for part 675 continues to read as follows:

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

2. In § 672.23, paragraph (c) is revised to read as follows:

§ 672.23 Seasons.

* * * * *

(c) Directed fishing for sablefish with hook-and-line gear in the regulatory areas and districts of the Gulf of Alaska is authorized from May 15 through December 31, subject to the other provisions of this part.

* * * * *

[FR Doc. 91-4669 Filed 2-22-91; 4:51 pm]
BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 56, No. 40
Thursday, February 28, 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

Animal and Plant Health Inspection Service

[Docket No. 91-023]

Receipt of Permit Applications for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that 18 applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Analyst, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application number	Applicant	Date received	Organism	Field test location
91-011-01	Monsanto Agricultural Company	01-11-91	Tomato plants genetically engineered to contain a gene which delays ripening process.	Illinois.
91-011-04	Monsanto Agricultural Company	01-11-91	Potato plants genetically engineered to express a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *tenebrionis*.	Oregon, Washington, & Wisconsin.
91-014-01	Rogers NK Seed Company	01-14-91	Tomato plants genetically engineered to express a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *kurstaki* strain HD1.	California.
91-014-02	Rogers NK Seed Company	01-14-91	Tomato plants genetically engineered to express the gene encoding the coat protein of the tomato mosaic virus.	California.
91-016-01	DuPont Agricultural Products	01-16-91	Tobacco plants genetically engineered to contain two marker genes, the kanamycin resistance gene and the betaglucuronidase gene.	Delaware & Texas.
91-018-01	Monsanto Agricultural Company	01-18-91	Soybean plants genetically engineered to express a gene encoding a modified 5-enolpyruvyl-shikimate-3-phosphate synthase which is not inhibited by the herbicide glyphosate.	Arkansas, Illinois, Indiana, & Maryland.
91-018-04	Monsanto Agricultural Company	01-18-91	Cotton plants genetically engineered to express a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *kurstaki*.	California & Mississippi.
91-023-06 (Courtesy Permit)	Auburn University	01-23-91	*Pseudomonas putida* strain 61.9A.3L which has been modified by the insertion of a genetically engineered transposon Tn*5*-Lux.	Alabama.
91-024-01	Monsanto Agricultural Company	01-24-91	Potato plants genetically engineered to contain a gene encoding the coat protein of the potato leaf roll virus.	Idaho, Illinois, & Washington.
91-024-04	U.S. Department of Agriculture, Agricultural Research Service.	01-24-91	Potato plants genetically engineered to express a modified *Alcaligenes eutrophus* 2, 4-D monooxy-genase gene.	Idaho.
91-025-01	BioTechnica Agriculture Incorporated.	01-25-91	Corn plants genetically engineered to contain a chimeric marker gene and storage protein gene.	Illinois, Iowa, Minnesota, & Nebraska.
91-025-02	DuPont Agricultural Products	01-25-91	Cotton plants genetically engineered to express tolerance to sulfonylurea herbicides.	Delaware, Maryland, & Mississippi.
91-025-03	Ciba-Geigy	01-25-91	Corn plants genetically engineered to contain a gene for resistance to the antibiotic hygromycin and a marker gene encoding beta-glucuronidase.	Illinois.

Application number	Applicant	Date received	Organism	Field test location
91-025-05	Rohm & Haas Company	01-25-91	Tobacco plants genetically engineered to express a delta-endotoxin protein from *Bacillus thuringiensis*.	North Carolina.
91-030-01	Monsanto Agricultural Company	01-30-91	Corn plants genetically engineered to express a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *kurstaki*.	Illinois.
91-030-04	Monsanto Agricultural Company	01-30-91	Potato plants genetically engineered to express a carbohydrate biosynthetic enzyme.	Idaho.
91-035-06	Campbell Institute for Research and Technology.	02-04-91	Tomato plants genetically engineered to express a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *kurstaki*.	California.
91-035-07	Calgene, Inc.	02-04-91	Cotton plants genetically engineered to express tolerance to the herbicide bromoxynil.	Georgia & South Carolina.

Done in Washington, DC, this 22nd day of February, 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-4713 Filed 2-27-91; 8:45 am]

BILLING CODE 3410-34-M

[Docket 91-001]

U.S. Veterinary Biological Product and Establishment Licenses Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The purpose of this notice is to advise the public of the issuance, suspension, revocation, or termination of veterinary biological product and establishment licenses by the Animal and Plant Health Inspection Service during the months of October and November 1990. These actions are taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act.

FOR FURTHER INFORMATION CONTACT: Joan Montgomery, Program Assistant, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; (301) 436-4873.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses for Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be used, and the form of the license.

Pursuant to these regulations, the Animal and Plant Health Inspection Service (APHIS) issued the following U.S. Veterinary Biological Product Licenses during the months of October and November 1990:

Product license code	Date issued	Product	Establishment	Establishment license No.
1015.10	10-03-90	Autogenous Vaccine, Killed Virus	Willmar Poultry Company	365
1232.10	10-01-90	Bronchitis Vaccine, Mass. Type, Live Virus	Immunogenetics, Inc.	196
1555.R0	10-25-90	Feline, Leukemia Vaccine, Killed Virus	Coopers Animal Health, Inc.	107
1705.12	10-19-90	Newcastle Disease Vaccine, Killed Virus	Maine Biological Laboratories, Inc.	240
264A.00	10-31-90	Erysipelothrix Rhusiopathiae-Haemophilus Pleuropneumoniae-Pasteurella Multocida Bacterin.	SmithKline Beckman Corporation	189
2659.00	10-31-90	Haemophilus Somnus Bacterin	American Home Products Corporation	112
2775.00	10-12-90	Mycoplasma Hyopneumoniae Bacterin	SmithKline Beckman Corporation	189
4639.21	10-01-90	Canine Distemper-Adenovirus Type 2-Parainfluenza-Parvovirus Vaccine—Leptospira Bacterin, Modified Live Virus.	American Home Products Corporation	112
48B6.10	10-26-90	Newcastle-Bronchitis Vaccine—Mycoplasma Gallisepticum Bacterin, Mass. Type, Killed Virus.	Solvay Animal Health, Inc.	195
5601.00	10-31-90	Fowl Laryngotracheitis Antibody Test Kit	Kirkegaard & Perry Labs, Inc.	350
7910.01	10-16-90	Salmonella, Typhimurium Bacterin-Toxoid	IMMVAC, Inc.	345
A555.R0	10-25-90	Feline Leukemia Virus Antigen, For Further Manufacture.	Cambridge BioScience Corp.	317
A601.01	10-31-90	Fowl Laryngotracheitis Virus, Modified Live Virus, For Further Manufacture.	Schering-Plough Animal Health Corp.	165A
A6E1.20	10-31-90	Feline Rhinotracheitis-Calici-Panleukopenia-Chlamydia Psittaci Vaccine, Modified Live Virus and Chlamydia, For Further Manufacture.	SmithKline Beckman Corporation	189
1045.1V	11-08-90	Avian Reovirus Vaccine, Killed Virus	Biomune, Inc.	368
1631.00	11-16-90	Marek's Disease Vaccine, Live Chicken Herpesvirus.	Sanofi Animal Health, Inc.	243
1651.00	11-16-90	Marek's Disease Vaccine, Live Chicken and Turkey Herpesvirus.	Sanofi Animal Health, Inc.	243
4A15.00	11-06-90	Bordetella Bronchiseptica-Clostridium Perfringens Type C-Erysipelothrix Rhusiopathiae-Escherichia Coli-Pasteurella Multocida Bacterin-Toxoid.	Ambico, Inc.	281

Product license code	Date issued	Product	Establishment	Establishment license No.
49T9.20	11-26-90	Procine Rotavirus-Transmissible Gastroenteritis Vaccine—Bordetella Bronchiseptica-Clostridium Perfringens Type C-Erysipelothrix Rhusiopathiae-Escherichia Coli-Pasteurella Multocida Bacterin-Toxoid, Modified Live Virus.	Ambico, Inc.	281

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license. No U.S. Veterinary Biologics Establishment Licenses were issued during the months of October and November 1990.

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses and U.S. Veterinary Biologics Establishment Licenses. Pursuant to these regulations, on October 3, 1990, APHIS terminated the following product licenses and the U.S. Veterinary Biologics Establishment License No. 112A, issued to Franklin Laboratories, Inc.:

Product license code	Product
A905.51	Rabies Virus, Killed Virus, For Further Manufacture.
A905.55	Rabies Virus, Killed Virus, For Further Manufacture.
A985.50	Wart Vaccine, Killed Virus, For Further Manufacture.
B401.00	Clostridium Chauvoei-Septicum Bacterin, For Further Manufacture.
B641.00	Erysipelothrix Rhusiopathiae Bacterin, For Further Manufacture.
B69A.00	Pasteurella Haemolytica Bacterin, For Further Manufacture.
B862.10	Campylobacter Fetus, Killed Culture. For Further Manufacture.
H101.00	Clostridium Perfringens Type C Toxoid, For Further Manufacture.
H301.01	Clostridium Perfringens Type D Toxoid, For Further Manufacture.
2465.00	Clostridium Haemolytica Bacterin.
2862.00	Campylobacter Fetus Bacterin.
8201.01	Clostridium Perfringens Types C & D Toxoid.

Also, on October 10, 1990, APHIS terminated the following U.S. Veterinary Biological Product Licenses that had been issued to Boehringer Ingelheim Animal Health, Inc., Establishment License No. 124:

Product license code	Product
2862.00	Campylobacter Fetus Bacterin.
2865.00	Campylobacter Fetus-Leptospira Pomona Bacterin.

Done in Washington, DC, this 22nd day of February 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-4712 Filed 2-27-91; 8:45 am]

BILLING CODE 3410-34-M

Soil Conservation Service

Andrews Park RC&D Measure, North Carolina

AGENCY: Soil Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Police Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Andrews Park Critical Treatment RC&D Measure, Jackson County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Bobbye J. Jones, State Conservationist, 4405 Bland Road, Raleigh, North Carolina 27609; phone (919) 790-2888.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Bobbye J. Jones, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for reducing erosion and resulting sedimentation in Andrews Park. The planned works of improvement include installing pipe outlets, rock line channels, earthen fill and rock rip rap. All disturbed areas will be seeded with adapted permanent vegetation.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Bobbye J. Jones. No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Dated: February 19, 1991.

Bobbye J. Jones,

State Conservationist.

[FR Doc. 91-4711 Filed 2-27-91; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges: Delft Instruments N. V. (Also Known as Oldelft, Old Delft, OldeDelft, Delft Instruments Electro-Optics, Delft Electronishe Products, Optishe Industrie Oude Delft), Oip Instrubel, and Franks & Co. Optik Gmbh

In the Matter of: Delft Instruments N.V.
also known as
Oldelft,
Old Delft,
Olde Delft,
Oude Delft,
Delft Instruments Electro-Optics,
Delft Electronische Products
and
Optische Industrie Oude Delft
with an address at: Van Miereveleltlaan 9,
P.O. Box 72, Delft, Netherlands and
OIP Instrubel

with an address at: Rue De Sacqa 75, 1060 Brussels, Belgium and,

FRANKS & Co. Optik GMBH

located in: Giassen, Germany, Respondents.

Order Temporarily Denying Export Privileges

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), pursuant to the provisions of § 788.19 of the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1990)) (the Regulations), issued pursuant to the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. 2401–2420 (Supp. 1990)) (Act),[1] has asked me to issue an order on and *ex parte* basis, temporarily denying all United States export privileges to Delft Instruments N.V., also known as Oldelft, Old Delft, Olde Delft, Oude Delft, Delft Instruments Electro-Optics, Delft Electronische Products and Optische Industrie Oude Delft (hereinafter collectively referred to as Delft), and to OIP Instrubel (OIP) and Franks & Co. Optik GMBH (Franks), Delft subsidiaries located in Belgium and Germany, respectively.

As a result of an investigation, the Department has reason to believe that, before and possibly after August 2, 1990, Delft and OIP have reexported from the Netherlands and Belgium to Iraq, U.S.-origin forward looking infrared thermal imaging equipment (hereinafter imaging equipment), without first obtaining the required U.S. government authorizations. The imaging equipment is used to enance visibility at night and is controlled by the Department of State.

The investigation also has given the Department reason to believe that Delft and OIP have in their possession U.S.-origin integrated chips and transistors that have military significance. Those items are controlled by the Department. The Department has reason to believe that Delft, OIP and Franks may reexport the integrated chips and transistors, or any other Commerce-controlled items that they obtain, without the required authorizations.

Therefore, based on the showing made by the Department, I find that an order temporarily denying the export privileges of Delft, OIP and Franks is necessary in the public interest to prevent an imminent violation of the Act and the Regulations and to give notice to companies in the United States and abroad to cease dealing with Delft, OIP and Franks in goods and technical data subject to the Act and the Regulations, in order to reduce the substantial likelihood that Delft, OIP and Franks will engage in activities which are in violation of the Act and the Regulations. This order is issued on an *ex parte* basis without a hearing based on the Department's showing that expedited action is required.

Accordingly, it is hereby *ordered.*

I. All outstanding validated export licenses in which Delft Instruments N.V., also known as Oldelft, Old Delft, Olde Delft, Oude Delft, Delft Instruments Electro-Optics, Delft Electronische Products and Optische Industrie Oude Delft, Van Miereveleltlaan 9, P.O. Box 72, Delft, Netherlands; OIP Instrubel, Rue De Sacqz 75, 1060 Brussels, Belgium, or Franks & Co. Optik, GMBH, Giassen, Germany, appear or participate, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of respondents' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Respondents Delft, OIP and Franks, their successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States, in whole or in part, or that are otherwise subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to any export license application submitted to the Department; (b) in preparing or filing with the Department any export license application or reexport authorization, or any document to be submitted therewith; (c) in obtaining or using any validated or general export license or other export control document; (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which either Delft, OIP or Franks is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any respondent or any related party, or whereby any respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any respondent or any related party denied export privileges or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States and subject to the Act and the Regulations.

V. In accordance with the provisions of § 788.19(e) of the Regulations, any respondent may, at any time, appeal this temporary denial order by filing with the Office of the Administrative Law Judge, U.S. Department of Commerce, room H–6716, 14th Street and Constitution Avenue, NW., Washington, DC 20230, a full written statement in support of the appeal.

VI. This order is effective immediately and shall remain in effect for 180 days.

VII. In accordance with the provisions of § 788.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration date. Any

[1] The Act expired on September 30, 1990. Executive Order 12730 (55 FR. 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (Supp. 1990)).

respondent may oppose a request to renew this temporary denial order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of this order.

A copy of this order shall be served on each respondent and this order shall be published in the Federal Register.

Dated: February 22, 1991.

Quincy M. Krosby,

Assistant Secretary for Export Enforcement.

[FR Doc. 91-4701 Filed 2-27-91; 8:45 am]

BILLING CODE 3510-DT-M

National Institute of Standards and Technology

[Docket No. 910234-1034]

National Voluntary Laboratory Accreditation Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice; Publication of 1990 NVLAP Third Quarterly Supplement.

SUMMARY: The National Institute of Standards and Technology (NIST) announces the publication of the 1990 NVLAP Third Quarterly Supplement listing of laboratories accredited and de-accredited through December 31, 1990. To obtain a copy, write to the National Voluntary Laboratory Accreditation Program (NVLAP), National Institute of Standards and Technology, Building 411, Room A124, Gaithersburg, MD 20899. Please include a self-addressed mailing label.

FOR FURTHER INFORMATION CONTACT: Nancy M. Trahey, Chief, Laboratory Accreditation Program, National Institute of Standards and Technology, Gaithersburg, MD 20899, (301) 975-4016.

SUPPLEMENTARY INFORMATION: The Directory of NVLAP Accredited Laboratories (NISTIR 90-4290) is published annually pursuant to 7.6(b) of the National Voluntary Laboratory Accreditation Program (NVLAP) Procedures (title 15, part 7 of the Code of Federal Regulations). The supplements to the Directory are published quarterly. Previous supplements are superseded with this notice.

Dated: February 22, 1991.

John W. Lyons,

Director.

[FR Doc. 91-4774 Filed 2-27-91; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Ad Hoc Bycatch Committee will hold a public meeting on February 28, 1991, at the Juneau Airport Travelodge, 9200 Glacier Highway, Juneau, AK. The meeting will begin at 1 p.m., or after the Council's Data Committee adjourns. The Bycatch Committee meeting may extend into March 1.

The Committee will review the following: Halibut, crab, and salmon bycatch to date, progress on implementing the Council's vessel incentive program, and development of future bycatch control measures. Bycatch management may also be discussed by Council members at the Fishery Planning Committee meeting to be held on February 27, 1991, in Juneau, AK.

For more information contact Steve Davis, Deputy Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

Dated: February 22, 1991.

David S. Crestin,

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

[FR Doc. 91-4678 Filed 2-27-91; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Granting of Federal Information Processing Standards (FIPS) Waiver

AGENCY: Department of Defense (DoD).

ACTION: Notice of granting of FIPS waiver request.

SUMMARY: The Department of Defense hereby gives notice of granting waivers of FIPS 46-1, "Data Encryption Standard (DES)" and FIPS 140, "General Security Requirements for Equipment Using the Data Encryption Standard" for DoD components to acquire and use the Low-cost Encryption/Authentication Device for the protection of unclassified sensitive DoD information. These waivers were made pursuant to section 111(d)(3) of the Federal Property and Services Act of 1949 (40 U.S.C. 759(d)).

DATES: The waivers were effective February 21, 1991.

ADDRESSES: Assistant Secretary of Defense (C3I), Department of Defense, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Stephen A. Kramer, Information Systems Security Staff Assistant, (703) 697-7626.

Dated: February 22, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-4651 Filed 2-27-91; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, 4 April 1991.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: David Slater, AGED Secretariat, 201 Varick Street, New York, NY 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: February 22, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-4652 Filed 2-27-91; 8:45 am]

BILLING CODE 3810-01-M

Settlement of Tort Claims

Pursuant to the Department of Justice order No. 1471–91 and 10 U.S.C. 113(d), the Secretary of Defense, Mr. Richard B. Cheney, delegates the Secretaries of the Army, Navy, and Air Force the authority to adjust, determine, compromise, and settle administrative claims involving respective Military Departments under 28 U.S.C. 2682 (relating to the administrative settlement of Federal tort claims), if the amount of the proposed settlement, compromise or award does not exceed $100,000.

The delegation to the Secretary of the Army includes the authority to adjust, determine, compromise, and settle administrative claims arising out of the acts or omissions of civilian personnel of DoD Components other than the Military Departments, in accordance with DoD Directive 5515.9, "Settlement of Tort Claims," September 12, 1990.

Dated: February 22, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–4650 Filed 2–27–91; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board will hold its Spring General Board Meeting on 9–10 April 1991 from 8 a.m. to 5 p.m. at Headquarters Strategic Command (SAC), Offutt Air Force Base, NE.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

The purpose of this meeting is to provide attendees the opportunity to become familiar with SAC's mission and planning outlook of the 21st century.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Dated: February 19, 1991.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91–4718 Filed 2–27–91; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by March 13, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice with attached proposed information collection requests prior to submission of these requests to OMB. For each proposed information collection request, grouped by office, this notice contains the following information: (1) Type of review requested, e.g., new, revision, extension, existing, or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting and/or Recordkeeping burden and (6) Abstract. Because an expedited review is requested, the information collection request is also included as an attachment to this notice.

Dated: February 22, 1991.

Mary P. Liggett,

Acting Director for Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Expedited.

Title: District, Principal and Teacher Survey on Safe, Drug-Free, Disciplined Schools.

Abstract: These forms will be used to collect data on issues related to safety, drug use prevention, and discipline in elementary and secondary schools. The Department will use this information to assess schools' current status, determine ways to improve school environment and monitor progress toward toward achieving the goals.

Additional Information: The Office of Educational Research and Improvement is requesting an expedited review of these surveys to meet Departmental goals for the monitoring of the Nation's progress toward achieving safe and drug-free schools.

Frequency: One-time.

Affected Public: Individuals or households; State or local Governments.

Reporting Burden: Responses: 3150; *Burden Hours:* 1575.

Recordkeeping Burden: Recordkeepers: 0; *Burden Hours:* 0.

BILLING CODE 4000–01–M

U.S. DEPARTMENT OF EDUCATION
NATIONAL CENTER FOR EDUCATION STATISTICS
WASHINGTON, D.C. 20208-5651

SURVEY ON SAFE, DRUG-FREE, DISCIPLINED SCHOOLS

FAST RESPONSE SURVEY SYSTEM

FORM APPROVED:
O.M.B. No.:
EXPIRATION DATE:

This survey is authorized by law (20 U.S.C. 1221e-l). While you are not required to respond, your cooperation is needed to make the results of this survey comprehensive, accurate, and timely.

DEFINITIONS FOR THIS SURVEY:

Drug use education refers to learning activities and related policies to prevent or reduce alcohol, drug (e.g., marijuana, inhalants, cocaine), and tobacco use by youth. It does not include clinical treatment or rehabilitation.

Disruptive behavior includes serious and/or unlawful actions that may interfere with order in school (e.g., physical attacks, property destruction, thefts). Alcohol, drug, and tobacco use should be reported separately on this questionnaire and not included under "disruptive behavior."

AFFIX LABEL HERE

IF ABOVE INFORMATION IS INCORRECT, PLEASE UPDATE DIRECTLY ON LABEL.

Name of Person Completing This Form:_____ Telephone Number:_____

Title:_____

RETURN COMPLETED FORM TO:

WESTAT, INC.
1650 Research Boulevard
Rockville, Maryland 20850

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existiing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1850-New, Washington, D.C. 20503.

NCES Form No.

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE ASSISTANT SECRETARY
FOR EDUCATIONAL RESEARCH AND IMPROVEMENT

March 1991

Dear Superintendent (Principal/Teacher)

On behalf of the National Center for Education Statistics (NCES), I request your participation in the national district survey on *Safe, Drug-Free, Disciplined Schools*. Westat is conducting the survey using the Fast Response Survey System (FRSS). Please complete the survey for your entire district.

The purpose of this survey is to collect information on policies and education programs intended to promote safe, drug-free, and disciplined schools. The data collected will play a vital role in helping the country meet the President's National Education Goals calling for safe, drug-free and disciplined schools. Your participation in this survey, while voluntary, is vital to the development of national estimates.

A copy of the survey findings will be sent to participating districts after this study is completed. If you have any questions about this survey, please call survey managers Sheila Heaviside or Wendy Mansfield at Westat's toll-free number, (800) 937-8281, or Judi Carpenter, the NCES Project Officer for FRSS, at (202) 219-1333.

Thank you very much for your assistance.

Sincerely,

Emerson J. Elliott
Acting Commissioner for
Education Statistics

1. Circle the number for each item describing your district's general discipline and alcohol, drug, and tobacco policies. *(Please describe the components separately, even if they are included in a single policy.)*

	GENERAL DISCIPLINE POLICY		ALCOHOL POLICY		DRUG POLICY		TOBACCO POLICY	
	YES	NO	YES	NO	YES	NO	YES	NO
a. Do you have a policy?	1	2	1	2	1	2	1	2
(If NO to a policy, skip items B, C, D, and E for that policy.)								
b. Are your district's policies:								
1) In writing?	1	2	1	2	1	2	1	2
2) Strict enough?	1	2	1	2	1	2	1	2
3) Comprehensive enough?	1	2	1	2	1	2	1	2
4) Clear?	1	2	1	2	1	2	1	2
5) Consistently applied at the school level?	1	2	1	2	1	2	1	2
6) Publicized enough?	1	2	1	2	1	2	1	2
c. Which of the following were involved in the development of your district's policies?								
1) Schools	1	2	1	2	1	2	1	2
2) Parents	1	2	1	2	1	2	1	2
3) State Education Agency	1	2	1	2	1	2	1	2
4) Community groups	1	2	1	2	1	2	1	2
5) Students	1	2	1	2	1	2	1	2
6) Outside experts	1	2	1	2	1	2	1	2

d. Which of the following are responsible for implementing your district's policies? *(Circle one number in each row.)*

	DISTRICT ONLY	DISTRICT, SOME SCHOOL INVOLVEMENT	DISTRICT AND SCHOOLS EQUALLY	SCHOOLS, SOME DISTRICT INVOLVEMENT	SCHOOLS ONLY
1) General discipline policy	1	2	3	4	5
2) Alcohol policy	1	2	3	4	5
3) Drug policy	1	2	3	4	5
4) Tobacco policy	1	2	3	4	5

e. Circle the number indicating when each of your policies was last changed significantly. (If never changed, indicate when they were adopted.)

	LESS THAN 1 YEAR AGO	1 - 3 YEARS AGO	MORE THAN 3 YEARS AGO
1) General discipline policy	1	2	3
2) Alcohol policy	1	2	3
3) Drug policy	1	2	3
4) Tobacco policy	1	2	3

2. a. Circle all grades taught in your district.

All K 1 2 3 4 5 6 7 8 9 10 11 12

b. Circle all grades in which alcohol, drug, and tobacco use education is required.

All K 1 2 3 4 5 6 7 8 9 10 11 12

c. In which of the following ways do schools in your district offer alcohol, drug, and tobacco use education?

	WITHIN HEALTH CURRICULUM		WITHIN SCIENCE CURRICULUM		AS A SEPARATE COURSE		THROUGHOUT THE CURRICULUM		AT SPECIAL ASSEMBLIES OR EVENTS		OTHER (SPECIFY)
	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	
Elementary	1	2	1	2	1	2	1	2	1	2	
Junior high	1	2	1	2	1	2	1	2	1	2	
Senior high	1	2	1	2	1	2	1	2	1	2	

d. How many hours of instruction in total in alcohol, drug, and tobacco use education are scheduled for the 1990-91 school year?

Elementary _____ hours Junior high _____ hours Senior high _____ hours

3. Circle the number indicating which components are currently part of your alcohol, drug, and tobacco use education program/activities. Check the three components that you feel are most effective.

		PART OF PROGRAM YES	PART OF PROGRAM NO	MOST EFFECTIVE
a.	Teaching students about causes and effects of alcohol, drug, and tobacco use	1	2	____
b.	Teaching students about laws regarding alcohol, drug, and tobacco use, possession, and sales	1	2	____
c.	Teaching students skills to resist peer pressure	1	2	____
d.	Peer counseling	1	2	____
e.	School alcohol, drug, and tobacco policy/enforcement	1	2	____
f.	Student assistance programs (SAPs)	1	2	____
g.	School services for high-risk students	1	2	____
h.	Referrals to counseling and treatment	1	2	____
i.	Student drug-testing programs	1	2	____
j.	Other (*specify*)_____	1	2	____

4. What did you use to evaluate the effectiveness of the components of your alcohol, drug, and tobacco use education programs/activities? *(Circle all that apply.)*

a. School records 1
b. Program evaluations 2
c. Student use surveys 3
d. Professional judgment 4
e. Other 5
(*specify*)_____

5. Circle the number indicating the extent to which each of the following organizations in your district provides assistance or educational support for alcohol, drug, and tobacco prevention programs.

		GREAT EXTENT	MODERATE EXTENT	SMALL EXTENT	NOT AT ALL
a.	Parent groups	1	2	3	4
b.	Private corporations and businesses	1	2	3	4
c.	Social service agencies	1	2	3	4
d.	Police	1	2	3	4
e.	Civic organizations/service clubs	1	2	3	4
f.	Colleges/universities	1	2	3	4
g.	Religious organizations	1	2	3	4
h.	Other (*specify*)_____	1	2	3	4

6. Circle the number indicating whether each type of support to promote safe, disciplined, drug-free schools is provided by groups outside the school system.

		YES	NO
a.	Sponsoring alcohol and drug prevention education programs for teachers and/or school staff	1	2
b.	Sponsoring alcohol and drug prevention education programs for students and families	1	2
c.	Sponsoring after-school activities/programs	1	2
d.	Serving on planning committee/task force	1	2
e.	Supporting efforts to increase school safety	1	2
f.	Other (*specify*)_____	1	2

7. How many times were the following actions taken in your district in the fall 1990 semester for disruptive behavior or student alcohol and drug use?

		NUMBER OF TIMES ACTIONS TAKEN FOR: DISRUPTIVE BEHAVIOR	NUMBER OF TIMES ACTIONS TAKEN FOR: ALCOHOL AND DRUG USE
a.	Referral to outside services	____	____
b.	Transfer to an alternative school for disruptive students	____	____
c.	In-school suspension	____	____
d.	Suspension	____	____
e.	Expulsion	____	____
f.	Notification of police	____	____
g.	Other (*specify*)_____	____	____

8. To obtain an approximate socioeconomic measure for your district in order to better interpret the data of this survey, please indicate the percent of students in your district currently receiving federally funded free or reduced-price lunches. _____%

U.S. DEPARTMENT OF EDUCATION NATIONAL CENTER FOR EDUCATION STATISTICS WASHINGTON, D.C. 20208-5651 **SURVEY ON SAFE, DRUG-FREE, DISCIPLINED SCHOOLS** FAST RESPONSE SURVEY SYSTEM	FORM APPROVED: O.M.B. No.: EXPIRATION DATE:
This survey is authorized by law (20 U.S.C. 1221e-1). While you are not required to respond, your cooperation is needed to make the results of this survey comprehensive, accurate, and timely.	

DEFINITIONS FOR THIS SURVEY:

Drug use education refers to learning activities and related policies to prevent or reduce alcohol, drug (e.g., marijuana, inhalants, cocaine), and tobacco use by youth. It does not include clinical treatment or rehabilitation.

Disruptive behavior refers to serious and/or unlawful actions that may interfere with order in school (e.g., physical attacks, property destruction, thefts). Alcohol, drug, and tobacco use should be reported separately on this questionnaire and not included under "disruptive behavior."

Misbehavior refers to less serious actions which may interfere with classroom teaching (e.g., student throwing something, talking back to teacher).

AFFIX LABEL HERE

IF ABOVE INFORMATION IS INCORRECT, PLEASE UPDATE DIRECTLY ON LABEL.

Name of Person Completing This Form:_____ Telephone Number:_____

Title/position:_____

What is the best day/time to reach you at this number, if we have any questions? _____ Day _____ Time

RETURN COMPLETED FORM TO:

WESTAT, INC.
1650 Research Boulevard
Rockville, Maryland 20850

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NCES Form No.

1. a. About how many students do you teach in a class? _____ students. b. In one day? _____ students.
c. How many hours a day do you usually teach classes? _____ hours.

2. Circle the number indicating to what extent, if any, each of the following has been a problem in your school during the 1990-91 school year.

		SERIOUS	MODERATE	MINOR	NOT A PROBLEM
a.	Student tardiness	1	2	3	4
b.	Student absenteeism/class cutting	1	2	3	4
c.	Physical conflicts among students	1	2	3	4
d.	Robbery or theft of items over $10	1	2	3	4
e.	Vandalism of school property	1	2	3	4
f.	Student alcohol use	1	2	3	4
g.	Student drug use	1	2	3	4
h.	Sale of drugs on school grounds	1	2	3	4
i.	Student tobacco use	1	2	3	4
j.	Student possession of weapons	1	2	3	4
k.	Trespassing	1	2	3	4
l.	Verbal abuse of teachers	1	2	3	4
m.	Physical abuse of teachers	1	2	3	4
n.	Racial tensions	1	2	3	4

3. Circle the number for each item describing your school's general discipline and alcohol, drug, and tobacco policies. *(Please describe the components separately, even if they are included in a single policy.)*

		GENERAL DISCIPLINE POLICY		ALCOHOL POLICY		DRUG POLICY		TOBACCO POLICY	
		YES	NO	YES	NO	YES	NO	YES	NO
a.	Does your school have a policy? *(If NO to a policy, skip items b-g for that policy.)*	1	2	1	2	1	2	1	2
b.	In writing?	1	2	1	2	1	2	1	2
c.	Strict enough?	1	2	1	2	1	2	1	2
d.	Comprehensive enough?	1	2	1	2	1	2	1	2
e.	Clear?	1	2	1	2	1	2	1	2
f.	Consistently applied?	1	2	1	2	1	2	1	2
g.	Publicized enough?	1	2	1	2	1	2	1	2

4. Circle the number indicating how effective you think your school's policies have been in reducing the following types of student behavior during the 1990-91 school year?

		VERY EFFECTIVE	SOMEWHAT EFFECTIVE	NOT VERY EFFECTIVE	NOT AT ALL EFFECTIVE
a.	Alcohol use	1	2	3	4
b.	Drug use	1	2	3	4
c.	Tobacco use	1	2	3	4
d.	Disruptive behavior	1	2	3	4
e.	Misbehavior	1	2	3	4

5. a. Have you ever received training regarding your school's general discipline policy? ☐ Yes; ☐ No.

b. If YES, please estimate the number of inservice training hours on your school's general discipline policy you will receive during the 1990-91 school year.

_____ hours.

6. a. Have you ever received training regarding your school's alcohol, drug, and tobacco policy? ☐ Yes; ☐ No.

b. If YES, please estimate the number of inservice training hours on your school's alcohol, drug, and tobacco policy you will receive during the 1990-91 school year.

_____ hours.

(If NO to both 5a and 6a, skip to Q8.)

7. Circle the number indicating whether each of the following components was included in the training you received regarding general school discipline and alcohol, drug, and tobacco policies.

		YES	NO
a.	Causes and effects of alcohol, drug, or tobacco use	1	2
b.	Identifying signs of alcohol, drug, or tobacco use	1	2
c.	Intervention techniques for your use with students suspected of alcohol, drug, or tobacco use	1	2
d.	Application and enforcement of alcohol policies	1	2
e.	Application and enforcement of drug policies	1	2
f.	Application and enforcement of tobacco policies	1	2
g.	Application and enforcement of other discipline policies	1	2
h.	Laws regarding alcohol, drug, or tobacco use, possession, and sale	1	2
i.	Availability of school services and other services for students using alcohol, drugs or tobacco	1	2

8. On a scale of 0 - 5, circle the number that indicates how much each of the following limits your ability to maintain order and discipline in the school.

		NOT AT ALL					VERY MUCH
a.	Lack of or inadequate number of security personnel	0	1	2	3	4	5
b.	Lack of or inadequate teacher training in discipline procedures and school law	0	1	2	3	4	5
c.	Lack of or inadequate alternative placements/programs for disruptive students	0	1	2	3	4	5
d.	Likelihood of complaints from parents	0	1	2	3	4	5
e.	Lack of support from administration	0	1	2	3	4	5
f.	Faculty's fear of student reprisal	0	1	2	3	4	5
g.	Other (*specify*)_____	0	1	2	3	4	5

9. Circle the number that indicates to what extent the following interfere with your teaching.

		GREAT EXTENT	MODERATE EXTENT	SMALL EXTENT	NOT AT ALL
a.	Student alcohol use	1	2	3	4
b.	Student drug use	1	2	3	4
c.	Student disruptive behavior	1	2	3	4
d.	Student misbehavior	1	2	3	4

10. a. Has a student from your school ever verbally abused you? ☐ Yes; ☐ No.

b. In the last four weeks of school? ☐ Yes; ☐ No. If YES, how many times? _____

11. a. Has a student from your school ever threatened to injure you? ☐ Yes; ☐ No.

b. In the last 12 months? ☐ Yes; ☐ No. If YES, how many times? _____

12. a. Has a student from your school ever physically attacked you? ☐ Yes; ☐ No.

b. In the last 12 months? ☐ Yes; ☐ No. If YES, how many times? _____

13. On a scale of 1 to 5, with 1 = very safe and 5 = very unsafe, please circle the number indicating how safe you feel:

		VERY SAFE				VERY UNSAFE
a.	In the school building during school hours?	1	2	3	4	5
b.	In the school building after school hours?	1	2	3	4	5
c.	On school grounds/campus?	1	2	3	4	5
d.	In the neighborhood of the school?	1	2	3	4	5

14. What is the average daily rate of absenteeism (excused and unexcused) in your classes? _____%

15. a. How many years have you been teaching? _____ years. b. In this school? _____ years.

16. What grades are you currently teaching? (*Circle all that apply.*)

K 1 2 3 4 5 6 7 8 9 10 11 12

17. What is your sex? ☐ Female; ☐ Male.

18. a. What is your race? ☐ Black ☐ White ☐ Asian/Pacific Islander ☐ American Indian/Alaskan Native ☐ Other (*specify*)_____

b. Are you of Hispanic origin? ☐ Yes; ☐ No.

1. Circle the number indicating to what extent, if any, each of the following has been a problem in your school during the 1990-91 school year.

		SERIOUS	MODERATE	MINOR	NOT A PROBLEM
a.	Student tardiness	1	2	3	4
b.	Student absenteeism/class cutting	1	2	3	4
c.	Physical conflicts among students	1	2	3	4
d.	Robbery or theft of items over $10	1	2	3	4
e.	Vandalism of school property	1	2	3	4
f.	Student alcohol use	1	2	3	4
g.	Student drug use	1	2	3	4
h.	Sale of drugs on school grounds	1	2	3	4
i.	Student tobacco use	1	2	3	4
j.	Student possession of weapons	1	2	3	4
k.	Trespassing	1	2	3	4
l.	Verbal abuse of teachers	1	2	3	4
m.	Physical abuse of teachers	1	2	3	4
n.	Teacher absenteeism	1	2	3	4
o.	Teacher alcohol or drug use	1	2	3	4
p.	Racial tensions	1	2	3	4

2. How many times were the following school actions taken at your school during the fall 1990 semester? *(In Column A count each incident of the school action. In Column B count the total number of different students involved for each type of school action.)*

	SCHOOL ACTION	A. NUMBER OF TIMES	B. NUMBER OF STUDENTS
a.	Notification of parents for disciplinary reasons		
b.	Referral to outside services		
c.	Transfer to an alternative school for disruptive students		
d.	In-school suspension		
e.	Suspension		
f.	Expulsion		
g.	Notification of police		

3. Circle the number that indicates whether your school has any of the following types of services or practices specifically for disruptive students (Column A), students using alcohol, drugs, or tobacco (Column B), and the general student body (Column C).

		A. DISRUPTIVE STUDENTS		B. STUDENTS USING ALCOHOL, DRUGS, OR TOBACCO		C. GENERAL STUDENT BODY	
		YES	NO	YES	NO	YES	NO
a.	Individual or group counseling programs	1	2	1	2	1	2
b.	Peer counseling program	1	2	1	2	1	2
c.	In-school suspension	1	2	1	2	1	2
d.	Program to identify high risk students	1	2	1	2	1	2
e.	Referrals to alternative programs or schools	1	2	1	2	1	2
f.	Academic assistance programs	1	2	1	2	1	2
g.	Student assistance programs (SAPs)	1	2	1	2	1	2
h.	Support groups for recovering students (aftercare)	1	2	1	2	1	2
i.	Community service projects	1	2	1	2	1	2
j.	Alcohol-, drug-, and tobacco-free extracurricular activities	1	2	1	2	1	2
k.	Health services	1	2	1	2	1	2
l.	Referrals to social services outside the school system	1	2	1	2	1	2
m.	Parent participation in school decisions about students	1	2	1	2	1	2
n.	Outreach or education programs for parents	1	2	1	2	1	2
o.	Instruction in conflict management	1	2	1	2	1	2

4. On a scale of 0 to 5, circle the number that indicates how much the following limit the ability to maintain order and discipline in your school.

	NOT AT ALL	VERY LITTLE				VERY MUCH
a. Lack of or inadequate number of security personnel	0	1	2	3	4	5
b. Lack of or inadequate teacher training in discipline procedures and school law	0	1	2	3	4	5
c. Lack of or inadequate alternative placements/programs for disruptive students	0	1	2	3	4	5
d. Likelihood of complaints from parents	0	1	2	3	4	5
e. Lack of teacher support for policies	0	1	2	3	4	5
f. Faculty's fear of student reprisal	0	1	2	3	4	5
g. Other (*specify*)_____	0	1	2	3	4	5

5. How many hours of inservice training on general discipline policy and alcohol, drug, and tobacco policy are required for school staff for the 1990-91 school year?

	GENERAL DISCIPLINE POLICY	ALCOHOL, DRUG, AND TOBACCO POLICY
a. For principals/administrators	_____ hours	_____ hours
b. For teachers	_____ hours	_____ hours

6. Circle the number indicating how effective do you think your school's policies have been in reducing each of the following types of student behavior during the 1990-91 school year.

	VERY EFFECTIVE	SOMEWHAT EFFECTIVE	NOT VERY EFFECTIVE	NOT AT ALL EFFECTIVE
a. Alcohol use	1	2	3	4
b. Drug use	1	2	3	4
c. Tobacco use	1	2	3	4
d. Disruptive behavior	1	2	3	4
e. Misbehavior	1	2	3	4

7. a. In which of the following ways does your school offer alcohol, drug, and tobacco use education? *(Circle one for each.)*

	YES	NO		YES	NO
1) Within health curriculum?	1	2	4) Throughout the curriculum?	1	2
2) Within science curriculum?	1	2	5) At special assemblies or events?	1	2
3) As a separate course?	1	2	6) Other (*specify*)_____	1	2

b. What is the average number of hours alcohol, drug, and tobacco use education will be taught in each grade during the 1990-91 school year? (*Write 0 for each grade in which it is not taught; write NA for each grade not offered at your school.*)

GRADE	HOURS	GRADE	HOURS	GRADE	HOURS	GRADE	HOURS
K	_____	4	_____	7	_____	10	_____
1	_____	5	_____	8	_____	11	_____
2	_____	6	_____	9	_____	12	_____
3	_____						

8. Circle the number indicating the extent to which each of the following organizations in your community provides assistance or educational support for your school's alcohol, drug, and tobacco prevention programs.

	GREAT EXTENT	MODERATE EXTENT	SMALL EXTENT	NOT AT ALL
a. Parent groups	1	2	3	4
b. Private corporations and businesses	1	2	3	4
c. Social services agencies	1	2	3	4
d. Police	1	2	3	4
e. Civic organizations/service clubs	1	2	3	4
f. Colleges/universities	1	2	3	4
g. Religious organizations	1	2	3	4
h. Other (*specify*)_____	1	2	3	4

9. a. To obtain an approximate socioeconomic measure for your school in order to better interpret the data of this survey, please indicate the percent of students in your school currently receiving federally funded free or reduced-price lunches. _____%

b. What was the average daily rate of student absenteeism (excused and unexcused) during the fall 1990 semester? _____%

[FR Doc. 91-4690 Filed 1-27-91; 8:45 am]
BILLING CODE 4000-01-C

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before April 1, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: February 22, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title: Performance Report for Christa McAuliffe Fellowship Program.

Frequency: Annually.

Affected Public: Individuals or households.

Reporting Burden: Responses: 75; *Burden Hours:* 225.

Recordkeeping Burden: Recordkeepers: 0; *Burden Hours:* 0.

Abstract: This report is used by State agencies to provide caseload data. The Department uses this information collected to assess the accomplishment of program management goals.

[FR Doc. 91–4691 Filed 2–27–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award a Grant to Engineering Foundation

AGENCY: Pittsburg Energy Technology Center, U.S. Department of Energy.

ACTION: Notice of Non-Competitive Financial Assistance (Grant) Award with Engineering Foundation.

SUMMARY: The Department of Energy (DOE), Pittsburgh Energy Technology Center announces that pursuant to 10 CFR 600.7(b)(2)(i) criteria (B), it intends to make a Non-Competitive Financial Assistance (Grant) Award to Engineering Foundation for a conference entitled "Inorganic Transformations and Depositions During Combustion."

SCOPE: The objective of this conference is to provide an opportunity for researchers working on ash related problems in combustion systems. Speakers will be invited who represent both the research community and industry in order to provide such interaction.

The program will include the following subjects:

Fireside Deposition Experience in Large-Scale Systems
Advanced Methods of Fuel, Ash and Deposit Characterization
Transformations of Inorganic Species During Combustion
Deposit Formation Mechanisms-Growth and Strength Development
Modeling of Ash Deposition Processes
Ash Deposition in Advanced Combustion Systems

In accordance with 10 CFR 600.7(b)(2)(i) criteria (B), a noncompetitive financial Assistance Award to Engineering Foundation has been justified.

This effort would be conducted by Engineering Foundation using their own resources; however DOE support of the activity would enhance public benefits to be derived by further understanding of ash deposition during combustion. DOE knows of no other entity which is conducting or planning to conduct such an effort. This effort is considered suitable for noncompetitive financial assistance under a solicitation, and a competitive solicitation would be inappropriate.

The grant is for an estimated total value of $125,000. The DOE share of cofunding for the conference is estimated at $10,000 and shall be used to pay for the reasonable cost of staff, administrative support personnel, consultants, and experts as necessary for the Conference.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236, Attn: Rhonda L. Dupree. Telephone: AC (412) 892–4959.

Dated: February 12, 1991.

Carroll Lambton,

Deputy Director, Acquisition and Assistance Division, Pittsburgh Energy Technology Center.

[FR Doc. 91–4781 Filed 2–27–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP91–1228–000, et al.]

The Inland Gas Co., Inc. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. The Inland Gas Company, Inc.

[Docket No. CP91–1228–000]

February 19, 1991.

Take notice that on February 12, 1991, The Inland Gas Company, Inc. (Inland), P.O. Box 1180, Ashland, Kentucky 41105–1180 filed in Docket No. CP91–1228–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon by sale to Magnum Drilling of Ohio, Inc. (Magnum), a portion of Inland's pipeline system consisting of approximately 69 miles of various pipeline sizes, 99 existing points of delivery and

appurtenant facilities located in Floyd, Johnson, Lawrence and Carter Counties, Kentucky, and associated service obligations, along with an interruptible transportation service for Columbia Gas Transmission Corporation (Columbia), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Inland states that the facilities constitute a portion of the existing system through which it transports gas supply which is produced from company-owned wells and third-party wells, as well as gas received from Tennessee Gas Pipeline Company (Tennessee) and Columbia. Under a sales agreement dated November 30, 1990, Inland states that it will transfer the facilities to Magnum and Magnum has agreed to continue the operation of this system. It is stated that the facilities Magnum will purchase will be operated as an entity solely in the State of Kentucky.

Inland proposes to abandon and sell to Magnum the following facilities: (i) Approximately 44 miles of 16-inch pipeline known as T–88 and a 50-foot section of 16-inch pipeline known as T–1, located in Floyd, Johnson, Lawrence and Carter Counties, Kentucky; (ii) approximately 22 miles of 8 and 12-inch pipeline known as Line T–2, located in Carter County, Kentucky; (iii) approximately 3 miles of 4 and 8-inch pipeline, one line known as T–45, one line known as T–46 and the third line known as T–47, all located in Carter County, Kentucky; (iv) Measuring and regulating facilities located at the existing point of receipt (Straight Creek) between Inland and Tennessee located in Carter County, Kentucky [1]; (v) point of receipt of gas transportation volumes from Columbia located in Johnson County, Kentucky; and (vi) 99 points of delivery through which service is provided to Louisville, Carter County Board of Education, General Refractories Company and 96 mainline rural customers' taps served pursuant to the terms of right-of-way agreements or pursuant to Kentucky Revised Statute 278.485.

Inland also seeks to abandon the interruptible transportation service provided for Columbia in Docket No. CP83–498, 28 FERC ¶ 61,287 (1984). According to Inland, Magnum has indicated that it will continue this interruptible transportation service via the facilities to be abandoned to either Tennessee or Inland for ultimate delivery to Columbia. Inland states that it will provide any additional transportation for Columbia under its blanket certificate in Docket No. CP89–779–000.

Inland states that it currently provides up to 300 Mcf per day of interruptible transportation service for Louisville under its blanket certificate and the request for authorization in Docket No. CP89–2137–000. Inland notes that it has pregranted abandonment authority under its blanket certificate and that the term of the transportation agreement with Louisville has expired. It is stated that Magnum will continue to make the transportation service available to Louisville after the transfer of facilities.

It is stated that Magnum will assume the existing obligation of Inland to provide certain non-jurisdictional sales and/or transportation services to the following customers: (i) Carter County Board of Education, served under a gas sales agreement dated August 1, 1990; (ii) General Refractories Company, currently in idle service; (iii) a right of way grantor, Harry Burton (now Loraine Burton), who purchases gas for distribution and resale in the community of Blaine, Lawrence County, Kentucky; and (iv) 95 other mainline rural customers currently served pursuant to contractual right-of-way agreements or Kentucky statutory requirements.

In connection with the non-jurisdictional sales service, Inland notes that it received certificate authority to acquire the facilities from a predecessor company in Docket No. CP61–266, 28 FERC 683 (1962). Inland states that the Commission order authorized the acquisition and operation of the facilities for the transportation of natural gas in interstate commerce to enable Inland to sell natural gas directly to consumers. Additionally, Inland states that it noted in its application that it would also sell natural gas produced and consumed in the State of Kentucky to Harry Burton for resale and distribution in the town of Blaine and that the gas would not be commingled with natural gas originating in or transported from another state. It is stated that Magnum will also purchase two existing Inland wells located on the facilities and will obtain purchase rights from the third-party wells which will be utilized to continue service to Mainline customers.

Inland submits that the abandonment of the facilities by sale is appropriate under the present circumstances and will reduce its operation and maintenance costs by approximately $50,000 annually. Inland has determined that the facilities proposed to be abandoned are no longer required for its remaining operations. The principal segment of pipeline proposed for abandonment, Line T–88 has, according to Inland, for a number of years been utilized to transport limited volumes of company production and purchased gas, which are primarily used to provide service to customers located on that portion of the system. Inland states that the gas originating on this portion of the pipeline does not flow through the entire length of Inland's system.

In fact, Inland states that this line is operationally isolated from Inland's facilities to the north by a closed valve. Inland avers that supply from the southern portion of its system, which is utilized to serve additional customers located on the northern portion of the system, is delivered to those customers through displacement under the terms of the exchange agreement with Columbia. Inland states that it will continue to utilize the exchange agreement with Columbia in this manner following the transfer of the facilities, and, therefore, service to remaining customers on Inland's system will not be affected by the transfer of facilities.

Inland states that transfer of the facilities will, by necessity, require transfer of the service currently provided to customers served from the facilities. According to Inland, Magnum has expressly agreed to assume all current obligations of Inland for providing service to existing customers. Inland believes that the abandonment will not affect the availability of gas service to existing customers.

Comment date: March 12, 1991, in accordance with Standard Paragraph F at the end of this notice.

2. Williston Basin Interstate Pipeline Co.

[Docket No. CP91–1230–000]

February 19, 1991.

Take notice that on February 12, 1991, Williston Basin Interstate Pipeline Company, (Williston Basin), Suite 200, 304 East Rosser Avenue, North Dakota 58501, filed in Docket No. CP91–1230–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide transportation for North Canadian Resources, Inc. (North Canadian), a marketer of natural gas, under Williston Basin blanket certificate issued in Docket No. CP89–1118–000 under section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

[1] Inland stated that Tennessee has indicated that it will file a request for authorization under the prior notice procedures for the transfer of this point of delivery to Magnum. It is stated that Magnum will utilize this point of receipt from Tennessee to continue transportation service for Louisville Fire Brick Works (Louisville).

Williston Basin states that it proposes to transport, on an interruptible basis, up to 120,000 dekatherms (Dkt) of natural gas per day for North Canadian from receipt points in North Dakota, Montana, Wyoming, and South Dakota and to delivery points in North Dakota. Williston Basin anticipates transporting 60,000 Dkt of natural gas on an average day and 43,800,000 Dkt of natural gas on an annual basis. Williston Basin also indicates that construction of facilities will not be required to provide the proposed service.

Williston Basin states that the transportation of natural gas for North Canadian commenced on December 13, 1990, as reported in Docket No. ST91–6335–000.

Comment date: April 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

3. Colorado Interstate Gas Co., Columbia Gulf Transmission Co., and Columbia Gulf Transmission Co.

[Docket Nos. CP91–1246–000, CP91–1248–000, and CP91–1249–000]

February 19, 1991.

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[2]

[2] These prior notice requests are not consolidated.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: April 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Applicant	Shipper name	Peak day [1] Avg. Annual	Points of		Start up date rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91–1246–000 2–13–91	Colorado Interstate Gas. Co., P.O. Box 1087, Colorado Springs, CO 80944.	Coastal Gas Marketing Co.	7,500 7,500 2,738,000	WY	CO	11–1–90, TF–1	CP86–589–000, ST91–5332–000.
CP91–1248–000 2–13–91	Columbia Gulf Transmission Co., 3805 West Alabama, Houston, TX 77027.	Chevron U.S.A., Inc.	50,000 20,000 7,300,000	LA	LA	1–1–91, ITS–1	CP86–239–000, ST91–6596–000.
CP91–1249–000 2–13–91	Columbia Gulf Transmission Co., 3805 West Alabama, Houston, TX 77027.	Elf Exploration, Inc.	15,000 10,000 3,650,000	Off LA	Off LA	1–1–91, ITS–2	CP86–239–000, ST91–6690–000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it

4. Williston Basin Interstate Pipeline Co.

[Docket Nos. CP91–1250–000 and CP91–1251–000]

February 19, 1991.

Take notice that the above referenced company (Applicant) filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: April 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No.[2] (date filed)	Applicant	Shipper name	Peak day,[1] avg. annual	Points of		Start up date, rate schedule	Related dockets
				Receipt	Delivery		
CP91-1250-000 2-13-91	Williston Basin Interstate Pipeline Co., Suite 200, 304 East Rosser Avenue, Bismark, ND 58501.	Farmers Union Central Exchange Inc..	2,336 1,168 852,640	WY	MT	1-1-91, IT-1	CP89-1118-000, ST91-6706-000.
CP91-1251-000 2-13-91	Williston Basin Interstate Pipeline Co., Suite 200, 304 East Rosser Avenue, Bismark, ND 58501.	Amerada Hess Corporation.	41,000 31,000 14,965,000	ND	ND	1-1-91, IT-1	CP89-1118-000, ST91-6704-000.

[1] Quantities are shown in Dt.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

5. United Gas Pipe Line Co.

[Docket No. CP91-1247-000]

February 20, 1991.

Take notice that on February 13, 1991, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP91-1247-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to operate an existing one-inch sales tap and to replace a one-inch riser on the existing tap for the sale of natural gas to Trans Louisiana Gas Company (Trans Louisiana) for resale to O.S. Johnson Asphalt Plant for commercial use, in Natchitoches Parish, Louisiana, under its blanket certificate issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United requests authorization to replace a one-inch riser on an existing tap to comply with Trans Louisiana's request to deliver an estimated maximum volume of 1,000 Mcf of natural gas per day to O.S. Johnson Asphalt Plant in Natchitoches Parish, Louisiana.

United states that the tap be used to facilitate the sale of gas to Trans Louisiana was previously authorized in Docket No. G-9423 which authorized United to provide all of Trans Louisiana's natural gas requirements for residential and commercial use in its Natchitoches Parish billing area. United also states that the cost for the proposed replacement of the one-inch riser is $850 and that Trans Louisiana will reimburse United for all costs resulting from the proposed replacement.

Comment date: April 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

6. Florida Gas Transmission

[Docket No. CP91-1238-000]

February 20, 1991.

Take notice that on February 12, 1991, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP91-1238-000 a request pursuant to §§ 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to upgrade the Plymouth Meter Station for Lake Apopka Natural Gas District (LANG), under FGT's blanket certificates issued in Docket No. CP82-553-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

FGT states that LANG, a local distribution company serving certain customers in the state of Florida, has requested FGT to upgrade the Plymouth delivery point to allow for increased hourly flows but would remain within the currently certificated levels of sales entitlement for LANG as authorized by Commission Order dated June 15, 1990, approving FGT's Stipulation and Agreement in Docket No. RP89-50-000, *et al.*

Comment date: April 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

7. Midwestern Gas Transmission Co., Texas Eastern Transmission Corp., Columbia Gulf Transmission Co. and Mississippi River Transmission Corp.

[Docket Nos CP91-1266-000, CP91-1274-000, CP91-1275-000 and CP91-1276-000]

February 20, 1991.

Take notice that on February 15, 1991, Applicants filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached appendix B.

Comment date: April 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points [1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1266-000 (2-15-91)	The Polaris Pipeline Corp. (Marketer).	25,000 25,000 [2] 9,125,000	Various	TN, IL, IN, KY	1-4-91, IT, Interruptible.	ST91-6761-000, 1-17-91.
CP91-1274-000 (2-15-91)	Equitable Resources Marketing Co. (Marketer).	200,000 200,000 73,000,000	Various	LA, MS, NJ, OH, PA	1-8-91, IT-1, Interruptible.	ST91-6848-000, 1-24-91.
CP91-1275-000 (2-15-91)	Texaco Gas Marketing, Inc. (Marketer).	25,000 10,000 3,650,000	OLA, OTX	TX, OLA	6-26-89, ITS-2, Interruptible.	ST91-6480-000, 12-13-90.
CP91-1276-000 (2-15-91)	KN Gas Marketing, Inc. (Marketer/Broker).	150,000 4,904 1,800,000	AR, IL, LA, TX	IL, MO	11-28-90, ITS, Interruptible.	ST91-6428-000, 12-21-90.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] Midwestern's quantities are in dekatherms.

Appendix B

Applicant's address	Blanket docket
Columbia Gulf Transmission Co., 3805 West Alabama, P.O. Box 683, Houston, Texas 77001	CP86-239-000
Midwestern Gas Transmission Co., P.O. Box 2511 Houston, Texas 77252	CP90-174-000
Mississippi River Transmission Corp., 9900 Clayton Road, St. Louis, Missouri 63124	CP89-1121-000
Texas Eastern Transmission Corp., 5400 Westheimer Court, P.O. Box 1642 Houston, Texas 77251-1642	CP88-136-000

8. Columbia Gulf Transmission Co. and Mississippi River Transmission Corp.

[Docket Nos. CP91-1265-000 and CP91-1277-000]

February 20, 1991.

Take notice that on February 15, 1991, Columbia Gulf Transmission Company, P.O. Box 683, Houston, Texas 77001, and Mississippi River Transmission Corporation, 9900 Clayton Road, St. Louis, Missouri 63124, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of two shippers under the blanket certificates issued in Docket No. CP86-239-000 and Docket No. CP89-1121-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[5]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: April 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

[5] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1265-000 (2-15-91)	Graham Energy Marketing Corporation (Marketer).	200,000 60,000 21,900.000	OLA, LA	OLA, LA, AL	11-15-89 [2], ITS-1&2, Interruptible.	ST91-6443-000, 12-7-90.
CP91-1277-000 (2-15-91)	Consolidated Fuel Corporation (Marketer).	1,030 1,030 375,950	IL, TX, LA, AR	MO	11-28-90, ITS, Interruptible.	ST91-6212-000, 12-1-90.

[1] Offshore Louisiana is shown as OLA.
[2] Columbia Gulf's Agreement No. 9189A is for ITS-2 service and Agreement No. 9189B is for ITS-1 service. Both agreements are dated November 15, 1989, and provide for a transportation quantity of 200,000 Dth per day.

9. Texas Gas Transmission Corp.

[Docket Nos. CP91-1254-000,[6] CP91-1255-000, CP91-1256-000 and CP91-1257-000]

February 20, 1991.

Take notice that on February 14, 1991, Texas Gas Transmission Corporation (Applicant), filed in the above referenced dockets prior notice requests pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed

[6] These prior notice requests are not consolidated.

transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the reference transportation rate schedule(s).

Comment date: April 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket number (date filed)	Applicant	Shipper name	Peak day,[1] avg, annual	Points of		Start up date, rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-1254-000 2-14-91	Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro, KY 42301.	Centran Corporation.	30,000 24,000 9,855,000	LA, TX, Off. LA, TN, Off. TX, KY, IL, AR, OH.	LA	1-09-91 IT	CP86-686-000 ST91-6587-000
CP91-1255-000 2-14-91	Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro, KY 42301.	Phibro Energy, Inc.	1,000 700 255,500	LA, IN, KY, TX, Off. LA, TN, IL, Off. TX, OH, AR.	LA	1-10-91 IT	CP86-686-000 ST91-6647-000
CP91-1256-000 2-14-91	Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro, KY 42301.	O & R Energy, Inc.	40,000 30,000 5,475,000	LA, IN, Off. LA, Off. TX, KY, IL, AR, OH, TN.	LA	1-17-91 IT	CP86-686-000 ST91-6586-000
CP91-1257-000 2-14-91	Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro, KY 42301.	Bishop Pipeline Corporation.	50,000 10,000 9,125,000	LA, IN, KY, TX, Off. LA, TN, IL, Off. TX, AR, OH.	IN, IL, KY	1-09-91 IT	CP86-686-000 ST91-6648-000

[1] Quantities are shown in Mcf unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

10. Tennessee Gas Pipeline Co.

[Docket No. CP90-639-001]

February 20, 1991.

Take notice that on February 14, 1991, Tennessee Gas Pipeline Company (Tennessee), 1010 Milam Street, Houston, Texas 77002, filed in Docket No. CP90-639-001, an amendment to its pending application in said docket to reflect a reconfiguration of its proposed facilities in light of changes in Phase II of the Iroquois/Tennessee Project, all as more fuly set forth in the application, which is on file with the Commission and open to public inspection.

In Opinion No. 357, the Commission authorized Tennessee to provide certain transportation services and to construct and operate certain facilities, proposed in Docket No. CP89—629-001, that related to Phase I of the Iroquois/ Tennessee Project. The remaining facilities and services proposed in Docket No. CP89-629-001 and those proposed in Docket No. CP90-639-000 were to be addressed in Phase II of the project. In Docket No. CP90-639-000, Tennessee requested a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act for authorization to transport 118,000 Mcf of natural gas per day for three Iroquois/Tennessee Project shippers (Boston Gas Company, Granite State Gas Transmission, Inc., and New England Power Company (NEP)) and to construct and operate facilities necessary to transport and deliver such gas. Tennessee states that, as a result of the withdrawal of its proposal to provide additional transportation service for NEP in Docket No. CP89-629-001, Tennessee no longer requires certain of the facilities proposed in Docket No. CP89-629-001. Since the facilities proposed in its application in this proceeding were originally designed on the assumption that all facilities proposed in Docket Nos. CP89-629-001 would be installed first, the elimination of certain of those facilities now requires changes in the proposed facilities design in this proceeding. Tennessee states that the amendment sets forth its revisedd design which reflects a combination of facilities originally proposed in Docket No. CP90-639-000 and certain facilities previously proposed in Docket No. CP89-629-001, along with other minor adjustments.

Tennessee states that, with one minor exception, the facilities as reconfigured have all been proposed either in this proceeding or in Docket No. CP89-629-001. The exception is the relocation of a new compressor station and associated substitution of 0.65 miles of loop for replacement pipeline on the Blackstone Lateral. It is stated that the new proposed facility design reflects the elimination of 8.54 miles of 36-inch loop in Albany County, New York; a 3,700 horsepower addition at Station 264 in Worcester County, Massachusetts; and 5.07 miles of 36-inch loop in Berkshire County, Massachusetts. In addition, two compressor additions would be rerated. The estimated total direct cost of the facilities now proposed in Docket No. CP90-639-001 is $68,582,000. Tennessee proposes to roll the facilities authorized in Docket Nos. CP89-629, *et al.*, together with the facilities proposed in this proceeding in determining the proposed consolidated incremental rates.

Tennessee requests that the application, as amended herein, receive expedited Commission consideration

and that the Commission act by May 1, 1991 to issue the requested authorizations. Tennessee states that it may not be able to complete the already approved Phase I facilities in time to provide service in accordance with the phase-in of volumes requested by customers. If the Phase I facilities cannot be completed in time to provide the phase-in of services, Tennessee would propose in 1991 to install and operate the 2,850 horsepower compression facilities at Station 261 that have been requested in Phase II to ensure that the phase-in volumes can be provided in a manner that will make additional gas capacity available to Northeast consumers at the earliest practicable time.

Comment date: March 13, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

11. Williams Natural Gas Co.

[Docket No. CP91–1201–000]

February 21, 1991.

Take notice that on February 8, 1991, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP91–1201–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon, by sale, a portion of its Lindsay 16-inch lateral pipeline and appurtenant facilities located in Garvin County, Oklahoma, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Williams seeks to abandon by sale, to Texaco Exploration and Production Company, approximately 6.4 miles of 16-inch lateral pipeline and appurtenant facilities. It is further stated that the cost to reclaim the facilities is approximately $700, the salvage value is $355,000 and the sales price is $355,000.

Comment date: March 14, 1991, in accordance with Standard Paragraph F at the end of this notice.

12. Florida Gas Transmision Co.

[Docket Nos. CP91–1281–000, CP91–1282–000, CP91–1283–000, CP91–1284–000, CP91–1285–000, CP91–1286–000

February 21, 1991.

Take notice that on February 19, 1991, Florida Gas Transmission Company (Applicant), P.O. Box 1188, Houston, Texas 77251–1188, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP89–555–000, pursuant to seciton 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[7]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: April 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

[7] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name	Peak day avg, annual [1]	Points of		Start up date, rate schedule, Service Type	Related docket contract date [3]
			Receipt	Delivery		
CP91–1281–000 (2–19–91)	Consolidated Fuel Corporation.	20,000 15,000 7,300,000	AL, FL, LA, MS, TX, OLA, OTX.	FL, LA, TX	2–1–91 ITS–1 Interruptible.	ST91–6892–000 2–23–90
CP91–1282–000 (2–19–91)	Heath Petra Resources	100,000 75,000 36,500,000	AL, FL, LA, MS, TX, OLA, OTX.	AL, FL, LA, MS, TX	2–1–91 ITS–1 Interruptible.	ST91–6893–000 2–23–90
CP91–1283–000 (2–19–91)	Tropicana Products, Inc.	50,000 37,500 18,250,000	AL, FL, LA, MS, TX, OLA, OTX.	FL	2–1–91 ITS–1 Interruptible.	ST91–6891–000 2–23–90
CP91–1284–000 (2–19–91)	Lake Apoka Natural Gas District.	10,500 7,875 3,832,500	AL, FL, LA, MS, TX, OLA, OTX.	FL	2–1–91 ITS–1 Interruptible.	ST91–6894–000 2–23–90
CP91–1285–000 (2–19–91)	City Gas Company of Florida.	4,200 3,150 1,533,000	AL, FL, LA, MS, TX, OLA, OTX.	FL	2–1–91 ITS–1 Interruptible.	ST91–6889–000 2–23–90
CP91–1286–000 (2–19–91)	Citizens Gas Supply Corporation.	800,000 600,000 292,000,000	AL, FL, LA, MS, TX, OLA, OTX.	AL, FL, LA, MS, TX, OLA.	2–1–91 ITS–1 Interruptible.	ST91–6890–000 2–23–90

[1] Quantities are shown in MMBtu.
[2] Offshore Louisiana and Offshore Texas are shown as OLA and OTX.
[3] If an ST docket is shown, 120-day transportation service was reported in it.

13. Northern Natural Gas Co., Northern Natural Gas Co., Northwest Pipeline Corp., Stingray Pipeline Co., Natural Gas Pipeline Co. of America

[Docket Nos. CP91–1280–000, CP91–1295–000, CP91–1287–000, CP91–1290–000, CP91–1291–000, CP91–1292–000]

February 21, 1991.

Take notice that Applicants filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[8]

Information applicable to each transaction, including the identity of the shipper, the type of transportation

[8] These prior notice requests are not consolidated.

service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached appendix B.

Comment date: April 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docke number (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points [1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1280-000 (2-19-91)	Lower Colorado River Authority (End-user).	4,500 3,375 1,642,500	OLA, LA	LA	1-2,91, IT-1, Interruptible.	ST91-6654-000 1-2-91
CP91-1287-000 (2-19-91)	BC Gas Inc. (LDC)	26,000 800 300,000	[2]	[3]	12-13-90, TI-1, Interruptible.	ST91-6625-000 12-29-90
CP91-1290-000 (2-19-91)	Amerada Hess Corporation (Producer).	40,000 15,000 5,475,000	LA, OLA, OTX	LA, OTX	12-8-89, ITS, Interruptible.	ST91-6618-000 12-28-90
CP91-1291-000 (2-19-91)	Entrade Corporation (Marketer).	150,000 50,000 18,250,000	Various	Various	9-22-89 [4], ITS, Interruptible.	ST91-6885-000 12-20-90
CP91-1292-000 (2-19-91)	Entrade Corporation (Marketer).	200,000 75,000 27,375,000	Various	Various	11-2-89 [4], ITS, Interruptible.	ST91-6919-000 12-15-90
CP91-1295-000 (2-20-91)	Arco Natural Gas Marketing, Inc. (Marketer).	15,000 11,250 5,475,000	OLA, OTX, LA, TX	OLA, OTX, LA, TX	1-3-91, IT-1, Interruptible.	ST91-6655-000 1-3-91

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] Any transportation receipt point on Northwest's system.
[3] Any transportation delivery point on Northwest's system.
[4] As amended.

Applicant's address	Blanket docket
Natural Gas Pipeline Company of America, 701 East 22nd Street, Lombard, Illinois 60148.	CP86-582-000
Northern Natural Gas Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188.	CP86-435-000
Northwest Pipeline Corporation, 295 Chipeta Way, Salt Lake City, Utah 84108.	CP86-578-000
Stingray Pipeline Company, 701 East 22nd Street, Lombard, Illinois 60148.	[5] RP89-70-000

[5] Order No. 509 issued Stingray a blanket transportation certificate corresponding to the rates, terms and conditions filed in Docket No. RP89-70-000.

14. United Gas Pipe Line Co.

[Docket Nos. CP91-1267-000, CP91-1268-000, CP91-1270-000, CP91-1271-000, CP91-1272-000, and CP91-1273-000]

February 21, 1991.

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to § § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[9]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also states that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: April 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

[9] These prior notice requests are not consolidated.

Docket number (date filed)	Applicant	Shipper name	Peak day,[1] avg. annual	Points of		Start up date rate schedule	Related dockets [2]
				Receipt	Delivery		
CP91-1267-000 2/15/91	United Gas Pipe Line Company, P.O. Box 1478, Houston, TX 77251-1478.	Mobil Natural Gas, Inc.	51,000 51,500 18,797,000	Offshore LA, TX	LA, MS, AL, KS	ITS Interruptible 1/16/91	CP88-6-000 ST91-6594-000
CP91-1268-000 2/15/91	United Gas Pipe Line Company, P.O. Box 1478, Houston, TX 77251-1478.	Pennzoil Gas Marketing Co.	206,000 206,000 75,190,000	TX, Offshore LA, MS.	LA, TX, MS, FL, AL	ITS Interruptible 1/16/91	CP88-6-000 ST91-6663-000

Docket number (date filed)	Applicant	Shipper name	Peak day,[1] avg. annual	Points of		Start up date rate schedule	Related dockets [2]
				Receipt	Delivery		
CP91-1270-000 2/15/91	United Gas Pipe Line Company, P.O. Box 1478, Houston, TX 77251-1478.	Midcon Marketing Corporation.	721,000 721,000 263,165,000	Offshore LA, TX, MS, NM, OK.	Offshore LA, TX, MS, FL, AL.	ITS..... Interruptible..... 1/11/91.....	CP88-6-000 ST91-6595-000
CP91-1271-000 2/15/91	United Gas Pipe Line Company, P.O. Box 1478, Houston, TX 77251-1478.	NGC Transportation Inc.	154,500 154,500 56,392,500	LA, TX, MS, AL.....	LA, TX, FL, AL.....	ITS..... Interruptible..... 12/31/90.....	CP88-6-000 ST91-6470-000
CP91-1272-000 2/15/91	United Gas Pipe Line Company, P.O. Box 1478, Houston, TX 77251-1478.	Transamerican Gas Transmission Corporation.	154,500 154,500 56,392,500	LA, TX.....	LA, TX, FL, MS.....	ITS..... Interruptible..... 1/11/91.....	CP88-6-000 ST91-6568-000
CP91-1273-000 2/15/91	United Gas Pipe Line Company, P.O. Box 1478, Houston, TX 77251-1478.	Prior Intrastate Corporation.	515,000 515,000 187,975,000	Offshore LA, TS, MS, AL.	LA, TX, AL, MS, FL..	ITS..... Interruptible..... 10/29/90.....	CP88-6-000 ST91-3942-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

15. Great Lakes Gas Transmission Limited Partnership

[Docket No. CP91-1186-000]

February 21, 1991.

Take notice that on February 7, 1991, Great Lakes Gas Transmission Limited Partnership (Great Lakes), One Woodward Avenue, suite 1600, Detroit Michigan 48226, filed an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing Great Lakes to provide natural gas transportation services for Northern States Power Company, a Minnesota corporation (NSP-Minnesota), and Northern States Power Company, a Wisconsin corporation (NSP-Wisconsin), all as more fully set forth in the application that is on file with the Federal Energy Regulatory Commission (Commission) and open to public inspection.

Great Lakes states that NSP-Minnesota and NSP-Wisconsin are local distribution companies serving the public within their authorized service territories within the states of Michigan, Minnesota, North Dakota, and Wisconsin, and that both have requested Great Lakes to provide natural gas transportation services. NSP-Minnesota and its wholly-owned subsidiary, NSP-Wisconsin, will be collectively referred to as "Northern States."

Great Lakes states that Northern States has requested it to provide the following firm natural gas transportation service. Great Lakes would receive up to 15,000 Mcf of gas per day at an interconnection between the facilities of Great Lakes and TransCanada PipeLines Limited at the United States-Canadian international boundary near Emerson, Manitoba, (Emerson Interconnection), or at an interconnection between the facilities of Great Lakes and Northern Natural Gas Company at Carlton, Minnesota (Carlton Interconnection) and transport and deliver on a firm basis thermally equivalent quantities to the Carlton Interconnection, to a to-be-constructed interconnection between the facilities of Great Lakes and Northern States at Ashland, Wisconsin (Ashland Delivery Point), to a to-be-constructed interconnection between the facilities of Great Lakes and Northern States at Ironwood, Michigan (Ironwood Delivery Point), to an interconnection between the facilities of Great Lakes and ANR Pipeline Company (ANR Pipeline) at Fortune Lake, Michigan (Fortune Lake Delivery Point), and to an interconnection between the facilities of Great Lakes and ANR Storage Company at Deward, Michigan (Deward Interconnection).

During the months of April through November, Great Lakes states that it would receive up to 10,000 Mcf of gas per day at an interconnection between the facilities of Great Lakes and ANR Pipeline at Farwell, Michigan (Farwell Interconnection), and transport and deliver thermally equivalent quantities of gas to the Deward Interconnection.

During the months of Novmeber through April, Great Lakes states that it would receive up to 35,000 Mcf of gas per day at either the Farwell Interconnection or the Deward Interconnection, and transport and deliver thermally equivalent quantities of up to 10,000 Mcf of gas to the Ironwood Delivery Point and to the Ashland Delivery Point, and/or up to 35,000 Mcf of gas to the Fortune Lake Delivery Point, to the Carlton Interconnection, and to the Emerson Interconnection.

Great Lakes states that the reservation fees and utilization fees for the transportation services will be the equivalent of a maximum rate under Great Lakes' FERC Gas Tariff, Original Volume No. 3 for services similar to those provided to Northern States.

Great Lakes states that in order to provide the transportation services to Northern States, Great Lakes must construct two new meter stations (one at Ashland, Wisconsin and the other at Ironwood, Michigan), plus 12.2 miles of 36-inch diameter loop pipeline. It is indicated that the 12.2 miles of loop pipeline would consist of two loop segments located in Minnesota, a 3.1-mile loop in Marshall County and a 5.9-mile loop in Beltrami County, and three loop segments located in Michigan, a 0.8-mile loop in Delta County, a 2.0-mile loop in Mackinac County, and a 0.4-mile loop in Otsego County. Great Lakes states that the projected cost of construction is approximately $17,600,000, expressed in 1991 dollars. Great Lakes further states that the proposed facilities would be financed with funds generated internally, together with borrowings from banks, or commercial paper (if required).

Great Lakes states that the public convenience and necessity will benefit by a grant of the application because Northern States will be able to diversify its sources of supply, add supply source options, and utilize storage services, thereby providing a secure and reliable supply for the winter heating needs of

the customers within its authorized service territories.

Comment date: March 14, 1991, in accordance with Standard Paragraph F at the end of the notice.

16. Sonat Marketing Co., Anthem Energy Co.

[Docket Nos. CI88–503–005, CI88–346–005] [10]

February 21, 1991.

Take notice that on February 15, 1991, Sonat Marketing Company of P.O. Box 2563, Birmingham, Alabama 35202–2563 and on February 19, 1991, Anthem Energy Company of 333 Clay Street, suite 2000, Houston, Texas 77002 (Applicants), each filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) rgulations thereunder to amend their blanket limited-term certificates with pregranted abandonment previously issued by the Commission in Docket Nos. CI86–503–004 and CI88–455–004 for terms expiring March 31, 1991 to extend the term of such authorizations, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Applicant in Docket Nos. CI86–503–005 requests extension for an unlimited term, or, in the alternative, for a term extending until wellhead price controls are permanently eliminated on January 1, 1993 pursuant to the Natural Gas Wellhead Decontrol Act, 15 U.S.C. 311 *et seq.*, and authorization to resell (1) Imported and/or liquified natural gas, and (2) natural gas sold under any existing or subsequently approved pipeline blanket certificate authorizing interruptible sales of surplus system supply (ISS gas). Applicant in Docket No. CI88–346–005 requests extension for an unlimited term, and that its authority to market ISS gas continue to be coextensive with its authority to market gas purchased from other sources.

Comment Date: March 13, 1991, in accordance with Standard Paragraph J at the end of this notice.

Standard Paragraphs

F. any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Louis D. Cashell,

Secretary.

[FR Doc. 91–4680 Filed 2–27–91; 8:45 am]

BILLING CODE 6717–01–M

[10] This notice does not provide for consolidation for hearing of the several matters covered herein.

[Docket Nos. ER91–260–000, et al.]

Southwestern Electric Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Southwestern Electric Power Co.

[Docket No. ER91–260–000]

February 19, 1991.

Take notice that Southwestern Electric Power Company on Febuary 11, 1991, tendered for filing a Power Supply Agreement (Agreement) dated November 15, 1990 between SWEPCO and Tex-La Electric Cooperative of Texas, Inc. (TEX-LA).

This Agreement supersedes and replaces the Power Supply Agreement between SWEPCO and TEX-LA, dated June 23, 1988, accepted for filing by order of the Federal Energy Regulatory Commission (Commission) on February 10, 1988, and provides for the extension of service to certain new loads to be transferred to the SWEPCO load control area.

SWEPCO requests waiver of the notice requirement in order that the Agreement may become effective as of January 1, 1991.

Copies of the filing were served upon TEX-LA and the Public Utility Commission of Texas.

Comment date: March 4, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. New York State Electric & Gas Corp.

[Docket No. ER90–318–000]

February 19, 1991.

Take notice that on February 8, 1991, New York Electric & Gas Corporation (NYSEG) tendered for filing pursuant to § 35.13 of the regulations under the Federal Power Act, as a rate schedule, an agreement with New England Power Company (NEP). The short term

agreement provides that NYSEG shall sell surplus capacity and associated energy to NEP and make available to NEP additional capacity and energy. This constitutes merely a continued service under Rate Schedule NYSEG FERC No. 102. Under this agreement, service for 50 megawatts began May 1, 1990, and terminated August 31, 1990. The contract also has provisions for additional service subject to availability and notice as follows: an additional 50 megawatts from September 1, 1990 to October 31, 1990, and an additional 25 megawatts from May 1, 1990 to October 31, 1990. Neither additional service was actually provided. Contract durations may be extended in writing by both parties.

NYSEG has filed a copy of this filing with New England Power Company, with the Massachusetts Department of Public Utilities, and with the Public Service Commission of the State of New York.

NYSEG requests that the 60-day filing requirement be waived and that May 1, 1990 be allowed as the effective date of the filing.

Comment date: March 4, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Niagara Mohawk Power Corp.

[Docket No. ER91-258-000]

February 19, 1991.

Take notice that on February 11, 1991, tendered for filing a cancellation of its Rate Schedule No. 117 between Niagara and Northeast Utilities Service Company (NU), acting as agent for the Hartford Electric Light Company, the Connecticut Light and Power Company and the Western Massachusetts Electric Company.

Niagara presently has on file an Agreement with NU dated October 1, 1981 which provides for the delivery of power and energy to NU from time to time. This Agreement is designated as Niagara Mohawk Power Corporation Rate Schedule No. 117. This cancellation is a result of the expiration of the October 1, 1981 agreement by its own terms.

Copies of the cancellation were served upon NU and the New York State Service Commission.

Comment date: March 4, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Idaho Power Co.

[Docket No. ER91-275-000]

February 19, 1991.

Take notice that on February 11, 1991, Idaho Power Company (IPA) tendered for filing amended rates applicable to the Agreement to Supply of Power and Energy between Idaho Power Company and Utah Associated Municipal Power Systems, dated February 10, 1988 and the Agreement for Supply of Power and Energy between Idaho Power Company and Washington City, Utah, dated July 6, 1987.

IPC has requested an effective date of April 1, 1991 for the amended rates.

IPC states that copies of the filing were served on the Utah Associated Municipal Power Systems, Washington City, Utah, the Idaho Public Utilities Commission and the Utah Public Service Commission.

Comment date: March 4, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Southwestern Electric Power Co.

[Docket No. ER91-259-000]

February 19, 1991.

Take notice that on February 11, 1991, Southwestern Electric Power Company (SWEPCO) tendered for filing a Power Supply Agreement (Agreement), dated December 28, 1990, between SWEPCO and the City of Bentonville, Arkansas (City).

The Agreement supersedes and replaces the Contract for Electric Service between SWEPCO and City dated July 31, 1973, as amended. Pursuant to the Agreement, SWEPCO will sell to City, and City shall purchase from SWEPCO, City's power and energy requirements in excess of the power and energy City purchases from the Southwestern Power Administration.

SWEPCO requests waiver of the notice requirement in order that the Agreement may become effective as of January 1, 1991.

Copies of the filing were served upon City and the Arkansas Public Service Commission.

Comment date: March 4, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Ohio Edison Co.

[Docket No. ER91-261-000]

February 19, 1991.

Take notice that on February 13, 1991, Ohio Edison Company submitted for filing under § 35.12 of the Commission's regulations an agreement concerning the sale of limited term energy by the Ohio Edison parties to Potomac Electric Power Company on an as-available basis.

The parties state that the agreement is beneficial to all partis and their customers and is in the public interest, and that charges for the aforesaid services were negotiated at arms' length and are mutually advantageous. The request an effective date of December 31, 1990, and request waiver of the Commission's notice requirements as necessary therefore. Copies of the filing have been served upon the Public Utilities Commission of Maryland, Ohio, Pennsylvania and Washington, DC.

Comment date: March 4, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. Washington Water Power Co.

[Docket Nos. ER91-3-000, ER91-4-000, ER91-5-000 and ER91-6-000]

February 19, 1991.

Take notice that on February 14, 1991 The Washington Water Power Company (WWP), tendered for filing an amendment to each of its filings in these four unconsolidated dockets. In its filing WWP amends the Agreement for the Sale of Energy between WWP and the City of Seattle. WWP also provided additional information concerning its cost of generation, and its incremental costs.

Comment date: March 4, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. Oklahoma Gas and Electric Co.

[Docket No. ER91-264-000]

February 21, 1991.

Take notice that on February 15, 1991, Oklahoma Gas and Electric Company (OG&E) tendered for filing an amended Appendix between OG&E and the Oklahoma Municipal Power Authority (OMPA).

The Amendment modifies the Transmission Service Agreement appendix D.

Copies of this filing have been served on OMPA, the Corporation Commission of the State of Oklahoma and the Arkansas Public Service Commission.

Comment date: March 8, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. Central Vermont Public Service Corp.

[Docket No. ER91-111-000]

February 21, 1991.

Take notice that Central Vermont Public Service Corporation (CVPS) on February 8, 1991, tendered for filing supplemental financial information, an amended contract and a notice of termination in the above docket.

CVPS requests the Commission to waive its notice of filing requirements to permit the rate schedules that were filed in this docket to become effective in accordance with their terms.

Comment date: March 8, 1991, in accordance with Standard Paragraph E at the end of this notice.

10. Pennsylvania Power & Light Co.

[Docket No. ER91-263-000]

February 21, 1991.

Take notice that on February 15, 1991 Pennsylvania Power & Light Company (PP&L) tendered for filing a Capacity Credit Sales Agreement (Agreement) between PP&L and GPU Service Corporation, as agent for Jersey Central Power & Light Company, Pennsylvania Electric Company and Metropolitan Edison Company (GPU Companies), which complements the Capacity and Energy Sales Agreement, dated December 21, 1989, between PP&L and GPUSC on file with the Commission as the Company's Rate Schedule FERC No. 100, as supplemented. The Agreement provides for the sale by PP&L to GPUSC of Daily Generating Capacity Megawatts solely for the GPU Companies' use in Pennsylvania-New Jersey-Maryland (PJM) Interconnection's planned and/or actual installed capacity accounting.

PP&L request waiver of the notice requirements of section 205 of the Federal Power Act and § 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective as of February 15, 1991. Service under the Agreement is expected to commence on February 15, 1991.

PP&L states that a copy of its filing was served on GPU Service Corporation, the Pennsylvania Public Utility Commission, and the New Jersey Board of Public Utilities.

Comment date: March 8, 1991, in accordance with Standard Paragraph E at the end of this notice.

11. South Carolina Industrial Committee South Carolina Public Service Authority

[Docket No. EL82-9-000]

February 21, 1991.

On March 1, 1982, the South Carolina Industrial Committee (South Carolina) filed a complaint against South Carolina Public Service Authority. On March 26, 1982, the City of Georgetown, South Carolina, and the Litchfield Beach Property Owners Association joined South Carolina's complaint. On January 22, 1991, South Carolina filed a notice of withdrawal of its complaint in Docket No. EL82-9-000. On February 4, 1991, both the City of Georgetown, South Carolina, and the Litchfield Beach Property Owners Association joined South Carolina's notice of withdrawal.

No one filed a motion in opposition to the notice of withdrawal, and the Commission took no action to disallow the withdrawal. Accordingly, pursuant to § 385.216 of the Commission's Rules of Practice and Procedure, 18 CFR 385.216 (1990), the withdrawal of South Carolina's complaint became effective on February 19, 1991.

12. PJM Group—NEH Transmission Service Agreement

[Docket No. ER91-20-000]

February 21, 1991.

Take notice that on February 8, 1991, the Office of the Pennsylvania-New Jersey-Maryland (PJM) Interconnection on behalf of the members of the PJM Interconnection (PJM Group) and New England Hydro-Transmission Electric Company, Inc. (NEH) submitted an amendment to the supporting material previously submitted in this docket. The amendment provides more detailed explanation of the need for the proposed rate schedule.

Comment date: March 8, 1991, in accordance with Standard Paragraph E at the end of this notice.

13. Paul L. Miller, Jr.

[Docket No. ID-2523-000]

February 21, 1991.

Take notice that on February 19, 1991, Paul L. Miller Jr. (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director: Union Electric Company
Director: Stifel Financial Corp.

Comment date: March 13, 1991, in accordance with Standard Paragraph E end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (118 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-4679 Filed 2-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-7-20-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

February 21, 1991

Take notice that Algonquin Gas Transmission Company ("Algonquin") on February 15, 1991, tendered for filing proposed changes in its FERC Gas Tariff as set forth in the revised tariff sheets:

Proposed to be Effective January 10, 1991, Second Revised Volume No. 1

30 Revised Sheet No. 211
2 Sub 26 Revised Sheet No. 214

Proposed to be Effective February 1, 1991, Third Revised Volume No. 1 Sub Original Sheet No. 41

Sub Original Sheet No. 42

Algonquin states that in a filing dated January 29, 1991, Texas Eastern Transmission Corporation (Texas Eastern) filed to flow through changes to the rates underlying its Rate Schedules SS-2 and SS-3. Such changes are proposed to be effective on January 10, 1991 and February 1, 1991. These Rate Schedules underlie Algonquin's Rate Schedules STB and SS-III, respectively. Pursuant to Section 10 of Rate Schedule STB and Section 9 of Rate Schedule SS-III, Algonquin is filing to track and the latest changes proposed by Texas Eastern. Pursuant to section 10.3 of Rate Schedule STB and section 9.3 of Rate Schedule SS-III, the proposed effective dates for the tariff sheets filed herein are January 10, 1991 and February 1, 1991, as listed above, to correspond with the effective dates of Texas Eastern's filing.

Algonquin states the effect under Rate Schedule STB is to increase the Damand rate by 39¢ per MMBtu, decrease the Space rate by 0.08¢ per MMBtu and increase the Injection and Withdrawal rates by 1.53¢ per MMBtu.

Algonquin further states that the effect under Rate Schedule SS-III is to increase the demand rate 39¢ per MMBtu, decrease the Space rate by 0.08¢ per MMBtu and increase the Injection and FDDQ Withdrawal rates by 1.53¢ per MMBtu. It also increases the Non-FDDQ Withdrawal rate by 1.53¢ per MMBtu on January 10, 1991, and on February 1, 1991 further increases it by 0.276 per MMBtu.

Algonquin states that Substitute Original Sheet No. 41, which sets forth Rate Schedule STB's rate for February 1, 1991, is being filed solely to bring forward the proposed January 10, 1991 rate changes into Algonquin's Third Revised Volume No. 1.

Algonquin states that Texas Eastern also filed alternate tariff sheets in the

event that the Commission approves alternate tariff sheet in the underlying rates. Therefore, Algonquin is also filing alternate tariff sheets, which are listed below, should the Commission approve Texas Eastern's alternate tariff sheets.

Proposed to be Effective January 10, 1991, Second Revised Volume No. 1

Alt 30 Revised Sheet No. 211
Alt 2 Sub 26 Revised Sheet No. 214

Proposed to be Effective February 1, 1991, Third Revised Volume No. 1

Alt Sub Original Sheet No. 41
Alt Sub Original Sheet No. 42

Algonquin states that the effect of these alternate tariff sheets under Rate Schedule STB is to increase the Demand rate by 60¢ per MMBtu, increase the Space rate by 0.03¢ per MMBtu and increase the Injection and Withdrawal rates by 2.23¢ per MMBtu.

Algonquin also states that the effect under Rate Schedule SS–III is to increase the Demand rate by 60¢ per MMBtu, increase the Space rate by 0.03¢ per MMBtu and increase the Injection and FDDQ Withdrawal rates by 2.23¢ per MMBtu. It also increases the Non-FDDQ Withdrawal rate by 2.23¢ per MMBtu on January 10, 1991, and on February 1, 1991 further increases it by 0.26¢ per MMBtu.

Algonquin states that Alternate Substitute Original Sheet No. 41, which sets forth Rate Schedule STB's rate for February 1, 1991, is being filed solely to bring forward the alternate proposed January 10, 1991 rate changes into Algonquin's Third Revised Volume No. 1.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissons.

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, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 28, 1991. Protests will be considered by the Commission in determing the approporiate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–4681 Filed 2–27–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP89–86–003 and RP90–128–001]

Chandeleur Pipe Line Co.; Report of Refunds

February 21, 1991

Take notice that on January 14, 1991, Chandeleur Pipe Line Company (Chandeleur) tendered for filing with the Federal Energy Regulatory Commission (Commission) its Report of Refunds made in accordance with the provisions of the Settlement Agreement filed in these proceedings on August 27, 1990 and approved by Commission Letter Order issued November 23, 1990.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such protests should be filed on or before February 28, 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 proceedings. Persons that are already parties to the proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–4682 Filed 2–27–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–143–000]

CNG Transmission Corp.; Informal Settlement Conference

February 21, 1991

Take notice that a conference will be convened in this proceeding on February 28, 1991, at 10 a.m., and continued on March 1, 1991 at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b) is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Marsha L. Gransee at (202) 208–0783, or James A. Pederson at (202) 208–2158.

Lois D. Cashell,

Secretary.

[FR Doc. 91–4683 Filed 2–27–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–115–018]

Columbia Gas Transmission Corp.; Notice of Report of Refunds

February 21, 1991.

Take notice that on February 5, 1991, Columbia Gas Transmission Corporation (Columbia) tendered for filing with the Federal Energy Regulatory Commission (Commission) its Report of Refunds, made to customers which had utilized Columbia's Firm Transportation Capacity on Texas Gas Transmission Corporation (Texas Gas) via Columbia's Capacity Access Program. The refund flows through that portion of Texas Gas' refund in Docket No. RP88–115 applicable to quantities transported on Texas Gas by such customers under Columbia's Capacity Access Program.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the commission's rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such protests should be filed on or before February 28, 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. Persons that are already parties to the proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–4684 Filed 2–27–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–91–000]

El Paso Natural Gas Co.; Compliance Tariff Filing

February 21, 1991.

Take notice that on February 19, 1991, El Paso Natural Gas Company ("El Paso") tendered for filing and acceptance, pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, certain tariff sheets to its FERC Gas

Tariff, First Revised Volume No. 1–A, to implement the provisions of an experimental capacity brokering program authorized on the High Island Offshore System ("HIOS").

El Paso states that on October 30, 1990, at Docket No. RP89–37–000, *et al.*, the Commission issued to HIOS an "Order Approving Uncontested Settlement, Amending Blanket Certificate, and Granting a Request for Waiver," which, among other things, authorized an experimental capacity brokering program ("brokering program") for firm transportation capacity on the HIOS system. By letter order dated December 18, 1990, the Commission accepted for filing certain tariff sheets implementing the brokering program to be included in HIOS' FERC Gas Tariff, First Revised Volume No. 1.

El Paso states that it currently holds firm transportation capacity rights on the HIOS system and accordingly may choose to broker its firm transportation capacity rights to a third-party assignee pursuant to the provisions of HIOS' brokering program. El Paso states that the October 30, 1990 order and HIOS' tariff requires certain preconditions to participation in its brokering program. Firstly, an interstate pipeline must have accepted a blanket certificate of public convenience and necessity under subparts G and/or K of part 284 of the Commission's Regulations. Secondly, HIOS' tariff requires that an interstate pipeline must also have on file with the Commission tariff sheets that (i) reflect the pertinent procedures and conditions set forth in HIOS' brokering program; and (ii) provide for the establishment of an open season for the allocation of assignable capacity. Accordingly, in compliance with the Commission's October 30, 1990 order and HIOS' tariff, El Paso is tendering certain tariff sheets which, when accepted and permitted to become effective, will establish a new section 25 to its Transportation General Terms and Conditions contained in its FERC Gas Tariff, First Revised Volume No. 1–A, to provide for the brokering of its firm transportation capacity rights on the HIOS system and procedures describing an open season.

El Paso respectfully requests that the Commission accept the tariff sheets for filing and permit them to become effective March 21, 1991, which is not less than thirty (30) days after the date of the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 351.211 of this chapter. All such motions, or protests should be filed on or before February 28, 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–4685 Filed 2–27–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–63–001]

South Georgia Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

February 21, 1991.

Take notice that on February 15, 1991, South Georgia Natural Gas Company (South Georgia) tendered for filing the following proposed tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff, with a proposed effective date of February 1, 1991:

First Substitute Sixth Revised Sheet No. 4C
First Substitute Second Revised Sheet No. 16D
First Substitute Second Revised Sheet No. 16T
First Revised Sheet No. 34A.01
First Revised Sheet No. 34A.02
Original Sheet No. 34A.03

South Georgia states that its filing has been made pursuant to the Commission's order date January 31, 1991 in Docket No. RP91–63. South Georgia's tariff sheets reflect the adjustment of the total amount of take-or-pay buy-out and buy-down costs allocated to South Georgia by Southern included in South Georgia's fixed charge proposed in Docket No. RP91–63 by taking 50% of the total amount of such costs allocated to South Georgia's historical G–2 customers and reallocating such amount to its traditional G–1 customers. Additionally, the tariff sheets reflect South Georgia's implementation of a true-up mechanism for volumetric charges incurred under South Georgia's take-or-pay allocation methodology proposed in this docket. Such mechanism will be implemented on an annual basis in conformance with the terms of the order as further described in Order 528–A.

South Georgia states that copies of the filing have been mailed to its customers, shippers and interested state commissioners.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such protests should be filed on or before February 28, 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–4686 Filed 2–27–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–68–031]

Transcontinental Gas Pipe Line Corp.; Compliance Filing

February 21, 1991.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on February 15, 1991 Third Revised Tariff Sheet No. 189 to its FERC Gas Tariff, Second Revised Volume No. 1.

Transco states that the purpose of the instant filing is to eliminate effective October 1, 1990 Section 3.10 of its Rate Schedule FT in compliance with the Commission's January 17, 1991, letter order. Such order accepted Transco's November 29, 1990, filing in Docket No. RP88–68–029 to eliminate the rate reference to Transco's FERC Account No. 191 commodity surcharge contained in the Rate Schedule FT rate sheet, which surcharge applied to all quantities delivered under the limited term Rate Schedule FT service agreements during the period November 1, 1989 through September 30, 1990. Transco requests a waiver of any notice requirements so that the attached tariff sheet may become effective on October 1, 1990.

Transco states that copies of the instant filing are being mailed to all parties served the November 29, 1990 filing in Docket No. RP88–68–029.

In accordance with provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such protests should be filed on or before February 28, 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–4687 Filed 2–27–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ91–4–11–000]

United Gas Pipe Line Co. Filing of Revised Tariff Sheets

February 21, 1991.

Take Notice that on February 15, 1991, United Gas Pipe Line Company (United) tendered for filing the following revised tariff sheets with a proposed effective date of March 1, 1991.

Second Revised Volume No. 1

First Revised Eleventh Revised Sheet No. 4
First Revised Eleventh Revised Sheet No. 4A
First Revised Eleventh Revised Sheet No. 4B
First Revised Ninth Revised Sheet No. 4D
First Revised Eleventh Revised Sheet No. 4I

The above referenced tariff sheets are being filed pursuant to § 154.308 of the Commission's Regulations to reflect changes in United's gas cost rate as provided in section 19 of United's FERC Gas Tariff, Second Revised Volume No. 1.

On January 31, 1991 United submitted a PGA Interim Adjustment in Docket No. TF91–2–11 to be effective February 1, 1991. The Commission rejected United's filing without prejudice to United filing an Out-of-Cycle PGA.

The purpose of this revision is to reflect the referenced out-of-cycle PGA rate adjustment to United's current gas cost rate. This filing reflects a gas cost rate increase of $0.0717 per Mcf as compared to United's prior out-of-cycle PGA filing in Docket No. TQ91–2–11–000, effective February 1, 1991. The increase in the current adjustment is the result of an overall increase in cost due to higher projected volumes of gas to be withdrawn from storage in March.

United states that the revised tariff sheets are being mailed to its jurisdictional sales customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in such accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such petitions or protests should be filed on or before February 28, 1991.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceedings. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–4688 Filed 2–27–91; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 90–103–NG]

NMU Gas Purchasing, Inc.; Order Granting Authorization To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import and export natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting NMU Gas Purchasing Inc. authorization to import up to 110 Bcf of Canadian natural gas and export up to 110 Bcf of natural gas over a two-year term beginning on the date of first import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 20, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–4782 Filed 2–27–91; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[WH-FLR-3909-3]

State and Local Assistance; Grants for State Water Pollution Control Revolving Funds (Title VI) Under the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of allotment.

SUMMARY: This notice sets forth the State allotments of fiscal year (FY) 1991 funding for the State revolving fund capitalization grants program under the Clean Water Act (the Act). On November 5, 1990 in Public Law No. 101–507 Congress appropriated $2,047,800,000 in funding for the State revolving fund capitalization grants program (title VI). The funds are alloted in accordance with the table in section 205(c)(3) of the Act, as amended by Public Law No. 100–4.

Through promulgation of this notice the requiremnts of the Act are fulfilled and the public is notified of the amounts made available to the States to capitalize the State water pollution control revolving funds. This notice also explains an adjustment to the allotment formula in section 205(c)(3) necessitated by laws affecting the funding status of the former Trust Territories of the Pacific Islands.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard B. Fitch, Program Management Branch, Municipal Construction Division, Office of Municipal Pollution Control (202) 382–5858.

SUPPLEMENTARY INFORMATION: Public Law No. 100–507 appropriated and made available $2,047,800,000 for State revolving fund capitalization grants (title VI) for fiscal year 1991. Section 604(a) of the Act requires that funds appropriated for title VI for fiscal years 1989 and 1990 be allotted in accordance with the table in section 205(c)(3) of the Act. Congress has given the Agency no instruction regarding the allotment of FY 1991 funds. In the absence of congressional action, the Agency will retain the existing formula and allot the fiscal year 1991 funds in accordance with the table in section 205(c)(3) except as described below. Adjustments to States' allotments were made to reflect that funding is no longer provided the Federated States of Micronesia and the Republic of the Marshall Islands (formerly part of the Trust Territories of the Pacific Islands). The adjustments necessitated by the change in stutus of

the former Trust Territories are explained below. The amount of FY 1991 funding that is made available to each State is listed in the table at the end of this notice.

Trust Territory Adjustment

In Public Law No. 99–658, Congress approved a Compact of Free Association for the Trust Territories' members. At the effective date of this allotment the Republic of Palau, a member of the Trust Territories, has yet to implement a Compact of Free Association. To cover this contingency, Public Law No. 99–239, section 105(h)(2) states that, "Upon the effective date of the Compact, the laws of the United States generally applicable to the Trust Territory of the Pacific Islands shall continue to apply to the Republic of Palau and the Republic of Palau shall be eligible for such proportion of Federal assistance as it would otherwise have been eligible to receive under such laws prior to the effective date of the Compact, as provided in Appropriations Acts or other Acts of Congress." To comply with both statutes it is necessary to decrease the Trust Territories' share of the appropriation by reducing its allotment. Funds that otherwise would have been allotted to the Trust Territories are redistributed to the States and Territories by proportionally increasing their respective shares of the appropriation as shown in the column titled "Allotment Formula After Trust Territory Adjustments." The actual allotments resulting from the adjusted allotment shares are shown in the column titled "FY 1991 State Allotment." The table at the end of this notice lists the amount of funding made available to each State. These funds have been issued by the EPA Comptroller and are available for obligation until September 30, 1992.

Grants from the allotments may be awarded as of the date that the funds were issued to the Regional Administrators by the Comptroller of EPA.

Dated: February 20, 1991.

William K. Reilly,

Administrator.

State	Allotment formula	Allotment formula after trust terr. adjustments	FY 1991 State allotment
Alabama	0.011309	0.011320	$23,180,100
Alaska	0.006053	0.006059	12,406,800
Arizona	0.006831	0.006837	14,001,500
Arkansas	0.006616	0.006622	13,560,800
California	0.072333	0.072400	148,261,100
Colorado	0.008090	0.008098	16,582,100
Connecticut	0.012390	0.012402	25,395,800
Delaware	0.004965	0.004970	10,176,800
Dist. of Columbia	0.004965	0.004970	10,176,800
Florida	0.034139	0.034171	69,974,800
Georgia	0.017100	0.017116	35,049,900
Hawaii	0.007833	0.007840	16,055,300
Idaho	0.004965	0.004970	10,176,800
Illinois	0.045741	0.045783	93,755,400
Indiana	0.024374	0.024397	49,959,400
Iowa	0.013688	0.013701	28,056,300
Kansas	0.009129	0.009137	18,711,700
Kentucky	0.012872	0.012884	26,383,800
Louisiana	0.011118	0.011128	22,788,600
Maine	0.007829	0.007836	16,047,100
Maryland	0.024461	0.024484	50,137,800
Massachusetts	0.034338	0.034370	70,382,700
Michigan	0.043487	0.043527	89,135,400
Minnesota	0.018589	0.018606	38,101,900
Mississippi	0.009112	0.009120	18,676,900
Missouri	0.028037	0.028063	57,467,500
Montana	0.004965	0.004970	10,176,800
Nebraska	0.005173	0.005178	10,603,100
Nevada	0.004965	0.004970	10,176,800
New Hampshire	0.010107	0.010116	20,716,300
New Jersey	0.041329	0.041367	84,712,100
New Mexico	0.004965	0.004970	10,176,800
New York	0.111632	0.111736	228,812,300
North Carolina	0.018253	0.018270	37,413,200
North Dakota	0.004965	0.004970	10,176,800
Ohio	0.056936	0.056989	116,701,800
Oklahoma	0.008171	0.008179	16,748,100
Oregon	0.011425	0.011436	23,417,800
Pennsylvania	0.040062	0.040099	82,115,200
Rhode Island	0.006791	0.006797	13,919,500
South Carolina	0.010361	0.010371	21,237,000
South Dakota	0.004965	0.004970	10,176,800
Tennessee	0.014692	0.014706	30,114,200
Texas	0.046226	0.046269	94,749,500
Utah	0.005329	0.005334	10,922,900
Vermont	0.004965	0.004970	10,176,800
Virginia	0.020698	0.020717	42,424,700
Washington	0.017588	0.17604	36,050,200
West Virginia	0.015766	0.015781	32,315,600
Wisconsin	0.027342	0.027367	56,043,000
Wyoming	0.004965	0.004970	10,176,800
American Samoa	0.000908	0.000909	1,861,100
Guam	0.000657	0.000658	1,346,700
Northern Marianas	0.000422	0.000422	865,000

State	Allotment formula	Allotment formula after trust terr. adjustments	FY 1991 State allotment
Puerto Rico	0.013191	0.013203	27,037,600
Pacific Trust Terr	0.001295	0.000367	752,200
Virgin Islands	0.000527	0.000527	1,080,200
Total	1.000000	1.000000	$2,047,800,000

[FR Doc. 91-4755 Filed 2-27-91; 8:45 am]
BILLING CODE 6560-50-M

[FRL-3909-2]

Science Advisory Board; Closed Meeting

Under Public Law 92-463, notice is hereby given that a meeting of an ad-hoc Subcommittee of the Science Advisory Board will be held in Washington, DC on March 11-12, 1991 to determine the recipients of the Agency's 1990 Scientific and Technological Achievement Cash Awards. These awards are established to give honor and recognition to EPA employees who have made outstanding contributions in the advancement of science and technology through their research and development activities, and who have published their results in peer-reviewed journals.

Pursuant to the appropriate provision of the Federal Advisory Committee Act, section 10(d) of 5 U.S.C. appendix 1, and the appropriate provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6), I have determined that this meeting may be closed to the public. In determining the actual cash amount of each award, the Agency requires full and frank advice from the Science Advisory Board. This advice will involve professional judgments on those employees whose published research results are deserving of a cash award as well as those that are not. In addition, the Board will advise on the amount of money to be allocated for each award. Discussions of such a personal nature, where disclosure would constitute an unwarranted invasion of personal privacy, may be closed to the public under section 10(d) of 5 U.S.C. appendix 1. In accordance with the provisions of the Federal Advisory Committee Act, minutes of the meeting will be kept for Agency and Congressional review.

The Science Advisory Board shall be responsible for maintaining records of the meeting and for providing an annual report setting forth a summary of the meeting consistent with the policy of 5 U.S.C. appendix 1 section 10(d).

For further information contact: Donald G. Barnes at (202) 382-4126.

Dated: February 20, 1991.
William K. Reilly,
Administrator.
[FR Doc. 91-4756 Filed 2-27-91; 8:45 am]
BILLING CODE 6560-50-M

Science Advisory Board

[FRC-3908-8]

Environmental Health Committee; Open Meeting

Under Public Law 92-463, notice is hereby given that a meeting of the Environmental Health Committee of the Science Advisory Board will be held on March 26-27, 1991 at the Holiday Inn, 8120 Wisconsin Ave., Bethesda MD 20814. The hotel telephone number is (301) 652-2000.

The meeting will start at 9 a.m. on March 26, and will adjourn no later than 5 p.m. March 27, and is open to the public. The main purpose of this meeting is to review the following draft documents: (1) "Response to Issues and Data Submissions on the Carcinogencity of Tetrachloroethylene (Perchloroethylene)" (EPA/600/6-91/002A) developed by the Agency's Office of Research and Development. The review will include a discussion of the classification of the compound under the Agency's weight of evidence classification system; and (2) "Alpha-2u Globulin: Association with Chemically Induced Renal Toxicity and Neoplasia in the Male Rat" (EPA/625/3-91/019A), prepared by the Agency's Risk Assessment Forum on the significance of the occurrence of kidney tumors in male rats exposed to certain toxicants. Single copies of both draft reports will be available on or about March 8, 1991 from the U.S. EPA, Office of Research and Development Publications Office, CERI-FRN, U.S. Environmental Protection Agency 26 W. Martin Luther King Drive, Cincinnati OH, 45268. Telephone (513) 569-7562, or on the Federal Telephone System (FTS) at 684-7562. Please provide your name and mailing address and request the document by title and EPA number. These documents are not available from the Science Advisory Board.

The Committee will also receive a briefing by Forum staff on the latest revisions to the draft "Guidelines for Health Assessment of Suspect Development Toxicants," which was reviewed by the Committee on October, 1989.

An Agenda for the meeting is available from Mary Winston, Staff Secretary, Sciened Advisory Board (A101F), U.S. Environmental Protection Agency, Washington, DC 20460 (202-382-2552). Members of the public desiring additional information should contact Mr. Samuel Rondberg, Executive Secretary, Environmental Health Committee, by telephone at the number noted above or by mail to the Science Advisory Board (A101F), 401 M Street, SW., Washington, DC 20460. Anyone wishing to make a presentation at the meeting should forward a written statement to Mr. Rondberg by March 19, 1991. The Science Advisory Board expects that the public statements presented at its meeting will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes.

Donald Barnes,
Director, Science Advisory Board.
[FR Doc. 91-4757 Filed 2-27-91; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

February 21, 1991.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452-1422. For further information on these submissions

contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235, NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0064.

Title: Application for Station Authorization in the Private Operational Fixed Microwave Radio Service.

Form Number: FCC Form 402.

Action: Revision.

Respondents: Individuals or households, state or local governments, businesses or other for-profit (including small businesses), and non-profit institutions.

Frequency of Response: On occasion reporting

Estimated Annual Burden: 7,619 responses; 6.166 hours average burden per response; 46,978 hours total annual burden.

Needs and Uses: FCC Rules require that applicants file FCC Form 402 to apply for a new station authorization for private operational fixed microwave station, a new station authorization to operate one or more fixed stations at locations in this service, or modification or renewal of station authorization. The data is used by Commission staff to determine whether the licensee is entitled to their authorization to operate.

OMB Number: 3060–0134.

Title: Application for Renewal of Private Radio Station License.

Form Number: FCC Form 574–R.

Action: Revision.

Respondents: Individuals or households, state or local governments, business or other for-profit (including small businesses), and non-profit institutions.

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 84,000 responses; .166 hours average burden per response; 13,944 hours total annual burden.

Needs and Uses: The FCC Form 574–R is filed by applicants in the Private Land Mobile and General Mobile Radio Services for renewal of an existing authorization. The data are used to determine eligibility for a renewal and issue a radio station license. The data are also used by Compliance personnel in conjunction with field engineers for enforcement purposes.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–4647 Filed 2–27–91; 8:45 am]

BILLING CODE 6712–01–M

[DA 91–221]

Advisory Committee on Advanced Television Service Implementation Subcommittee Meeting

February 21, 1991.

A meeting of the Implementation Subcommittee of the Advisory Committee on Advanced Television Service will be held on: March 20, 1991, 10 a.m., Commission Meeting Room (room 856), 1919 M Street, NW., Washington, DC.

The agenda for the meeting will consist of:

1. Introduction.
2. Minutes of Last Meeting.
3. Report of Working Party 1 Policy and Regulation.
4. Report of Working Party 2 Transition Scenarios.
5. General Discussion.
6. Other Business.
7. Date and Location of Next Meeting.
8. Adjournment.

All interested persons are invited to attend. Those interested also may submit written statements at the meeting. Oral statements and discussion will be permitted under the direction of the Implementation Subcommittee Chairman.

Any questions regarding this meeting should be directed to Dr. James J. Tietjen at (609) 734–2237 or David R. Siddall at (202) 632–7792.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–4648 Filed 2–27–91; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Southeastern Caribbean Discussion Agreement; 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.: 203–011038–008.

Title: Southeastern Caribbean Discussion Agreement.

Parties: United States Atlantic and Gulf/Southeastern Caribbean Conference, Trailer Marine Transport Corporation, Seaboard Marine, Ltd., Tecmarine Line, Inc., Bernuth Lines, North American Caribbean Line Ltd., Blue Caribe Line.

Synopsis: The proposed amendment would add Kirk Line Ltd. as an independent carrier party to the Agreement. The parties have requested a shortened review period.

Agreement no.: 212–011213–019.

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 Service, Inc.

Synopsis: The proposed amendment would modify Article 5.F.4(c) to provide that the method of distribution of excess funds set forth in this Article may be amended if the members of the relevant Section unanimously agree.

By Order of the Federal Maritime Commission.

Dated: February 22, 1991.

[FR Doc. 91–4663 Filed 2–27–91; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants; I.T.A.L.M.S. et al.

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

International Trade and Logistics Management, Inc. dba I.T.A.L.M.S., 301 Moon Clinton Road, Coraopolis, PA 15108

Officers: Alessandra Busatta in Gruelle, President Durard Timothy Gruelle, Secretary/Treasurer

Marli Shipping, 144A Fairfield Rd., Fairfield, NJ 07004

Alan P. Antaki, Sole Proprietor

Leo Shipping Inc., 15549 Dupage, Taylor, MI 48180

Officer: M. Abdul Qayyum Kahn, President

C & F International, Inc., 1952 Lancaster, Grosse Pte. Wds., Michigan 48236

Officers: Gary L. Clements, President, Heinrich A. Freidemann, Vice President, Kenneth R. Howse, Treasurer, Brian P. Palmer, Director, Donald R. McMillan, Secretary

Atrade Forwarding Corporation, 145–18 156th Street, Jamaica, New York 11434

Officers: Raul Barbosa, President

Technion Industries, Inc. dba Kennelly & Sisman Company, 14300 Tireman, Detroit, Michigan 48228

Officers: Ronald L. Koos, President, Steve Koos, Vice President, Thomas W. Koos, Chairman of the Board, Rosita Koos, Secretary.

Dated: February 22, 1991.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–4664 Filed 2–27–91; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Revocations; Terramar Shipping Co., Inc., et al.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders CFR part 510.

License number: 131.

Name: Terramar Shipping Company, Inc.

Address: One World Trade Center, Suite 1215, New York, NY 10048.

Date revoked: December 14, 1990.

Reason: Surrendered license voluntarily.

License number: 1195.

Name: L. Braverman & Company.

Address: 2501 Crawford, Houston, TX 77004.

Date revoked: January 20, 1991.

Reason: Failed to furnish a valid surety bond.

License number: 3345.

Name: MRH Interntional, Ltd.

Address: 145th Avenue & Hook Creek Blvd., Valley Stream, NY 11581.

Date revoked: January 31, 1991.

Reason: Surrendered license voluntarily.

License number: 1443R.

Name: ALZO Intenational Company, Inc.

Address: 1222 East Imperial Avenue, El Segundo, CA 90245–0783.

Date revoked: February 2, 1991.

Reason: Failed to furnish a valid surety bond.

License number: 2668.

Name: S & Z International Air Forwarders, Inc.

Address: 7520 Connelley Drive, Hanover, MD 21076.

Date revoked: February 8, 1991.

Reason: Failed to furnish a valid surety bond.

Robert G. Drew,

Director, Bureau of Domestic Regulation

[FR Doc. 91–4665 Filed 2–27–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Dunkin Family Trust; Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than March 19, 1991.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Dunkin Family Trust, Harlingen, Texas; to acquire an additional 19.47 percent of the voting shares of Harlingen National Bancshares, Inc., Harlingen, Texas, for a total of 44.52 percent, and thereby indirectly acquire Harlingen National Bank, Harlingen, Texas.

Board of Governors of the Federal Reserve System, February 22, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–4714 Filed 2–27–91; 8:45 am]

BILLING CODE 6210–01–F

PBA Financial Corp., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 19, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. PBA Financial Corporation, Mobile, Alabama; to become a bank holding company by acquiring 80 percent of the voting shares of PBA Bancorporation, Centreville, Alabama, and thereby indirectly acquire Peoples Bank of Alabama, Centreville, Alabama.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Firstbank of Illinois Co., Springfield, Illinois; to acquire 100 percent of the voting shares of Central Banc Systems, Inc., Fairview Heights, Illinois, and thereby indirectly acquire Central Bank of Fairview Heights, Fairview Heights, Illinois, and Farmers & Merchants Bank of Carlinville, Carlinville, Illinois.

2. HP Holding Company, Oak Park, Illinois; to acquire 97.15 percent of the voting shares of Bank of Commerce and Industry, Chicago, Illinois.

3. Prairie Bancorp, Inc., Manlius, Illinois; to acquire 99 percent of the voting shares of Tampico National Bank, Tampico, Illinois.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Independent Colorado Bancshares, Inc., Philadelphia, Pennsylvania; to acquire at least 68 percent of the voting shares of The Berthoud Bancorp, Inc., Berthoud, Colorado, and thereby indirectly acquire 100 percent of the voting shares of The Berthoud National Bank, Berthoud, Colorado.

Board of Governors of the Federal Reserve System, February 22, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-4715 Filed 2-27-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Request for Nominations for Members on the Advisory Committee on Medicare—Physician Relationships

AGENCY: Health Care Financing Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Care Financing Administration (HCFA) is requesting nominations for members to serve on the Advisory Committee on Medicare—Physician Relationships. The Committee is comprised on eight members, one of which is the Senior Medical Advisor of HCFA.

DATES: Nominations must be received or postmarked no later than March 15, 1991.

ADDRESSES: All nominations for membership should be submitted to Bill Pickens, Health Care Financing Administration, Office of Legislation and Policy, HHH Building, 200 Independence Ave. SW., Washington, DC 20201, 202–245–0444.

FOR FURTHER INFORMATION CONTACT: Bill Pickens, 202–245–0444 (see address above).

SUPPLEMENTARY INFORMATION: HCFA is requesting nominations for members to serve on the Advisory Committee on Medicare—Physician Relationships. The function of the Committee is to advise the Secretary on existing Medicare policies and procedures that directly relate to physicians' provision of services to Medicare beneficiaries and, in particular, on those Peer Review Organization and carrier policies and procedures which are perceived as administratively burdensome. Also, the Committee will look at methods to improve existing Medicare carrier services, responsiveness to physicians, and the cost and administrative burden the Medicare program places on physicians. The Committee will not consider payment issues.

The Advisory Committee on Medicare—Physician Relationships is not the Practicing Physicians Advisory Council which was mandated by Congress in the Omnibus Budget Reconciliation Act of 1990. The latter committee will discuss certain proposed changes in regulations and carrier manual instructions related to physician services identified by the Secretary.

Criteria for Members

Persons nominated for membership on this Committee shall be physicians who are actively engaged in the practice of medicine, with Medicare beneficiaries representing at least 25 percent of their patients, and currently accepting new Medicare patients. Medicare participation is not a condition of membership.

Nomination Procedure

Nominations shall state that the nominee is aware of the nomination and is willing to serve as a member of the advisory committee. Potential candidates will be asked by HCFA to provide detailed information concerning such matters as financial holdings, consultant positions, and research grants or contracts in order to permit evaluation of possible sources of conflict of interest.

Authority: This notice is issued under the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App.I)) and 21 CFR Part 14, relating to advisory committees.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 91–4717 Filed 2–27–91; 8:45 am]

BILLING CODE 4120–03–M

Medicare Program; Establishment of the Advisory Committee on Medicare—Physician Relationships; Establishment

Pursuant to Public Law 92–463, the Federal Advisory Committee Act, the Department of Health and Human Services announces the establishment by the Secretary of the Advisory Committee on Medicare—Physician Relationships.

The Committee shall advise the Secretary on the existing Medicare policies and procedures that directly relate to physicians' provision of services to Medicare beneficiaries, and in particular, on those Peer Review Organization and carrier policies and procedures which are perceived as administratively burdensome. Also, the Advisory Committee will look at the methods to improve Medicare carrier services, responsiveness to physicians, and the cost and administrative burden the Medicare program places on physicians. This committee will not consider payment issues.

The Advisory Committee on Medicare—Physician Relationships is not the Practicing Physicians Advisory Council which was mandated by Congress in the Omnibus Budget Reconciliation Act of 1990. The latter committee will discuss certain proposed changes in regulations and carrier manual instructions related to physician services identified by the Secretary.

Unless renewed by appropriate action prior to its expiration, the Advisory Committee will terminate December 31, 1991.

Dated: February 20, 1991.

Signed:

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 91–4716 Filed 2–27–91; 8:45am]

BILLING CODE 4160–15–M

Medicare and Medicaid Programs; Meeting of the Advisory Council on Social Security

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

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Advisory Council on Social Security.

DATES: The meeting will be open to the public on March 15, 1991 from 9 a.m. to 6:30 p.m.; and on March 16, 1991, from 9 a.m. to 4:30 p.m.

ADDRESSES: Loew's L'Enfant Plaza Hotel, 480 L'Enfant Plaza East SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Robert Lagoyda, Program Analyst, Advisory Council on Social Security, room 638 G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington DC 20201, 202–245–0217.

SUPPLEMENTARY INFORMATION:

I. Purpose

Under section 706 of the Social Security Act (the Act), the Secretary of Health and Human Services (the Secretary) appoints the Council every four years. The Council examines issues affecting the Social Security retirement, disability, and survivors insurance programs, as well as the Medicare and Medicaid programs, which were created under the Act.

In addition, the Secretary has asked the Council specifically to address the following:

- The adequacy of the Medicare program to meet the health and long-term care needs of our aged and disabled populations, the impact on Medicaid of the current financing

structure for long-term care, and the need for more stable health care financing for the aged, the disabled, the poor, and the uninsured;

• Major Old-Age, Survivors, and Disability Insurance (OASDI) financing issues, including the long-range financial status of the program, relationship of OASDI income and outgo to budget-deficit reduction efforts under the Balanced Budget and Emergency Deficit Control Act of 1985, and projected buildups in the OASDI trust funds; and

• Broad policy issues in Social Security, such as the role of Social Security in overall U.S. retirement income policy.

The Council is composed of 12 members: G. Lawrence Atkins, Robert M. Ball, Philip Briggs, Lonnie R. Bristow, Theodore Cooper, John T. Dunlop, Karen Ignagni, James R. Jones, Paul O'Neill, A. L. "Pete" Singleton, John J. Sweeney, and Don C. Wegmiller. The chairperson is Deborah Steelman.

The Council is to report to the Secretary and Congress in 1991.

II. Agenda

The Council will discuss issues relating to health care financing policy.

The agenda items are subject to change as priorities dictate.

(Catalog of Federal Domestic Assistance Programs Nos. 13.714 Medical Assistance Program; 13.733 Medicare-Hospital Insurance; 13.774 Medicare-Supplementary Medical Insurance; 13.802, Social Security-Disability Insurance; 13.803 Social Security-Retirement Insurance; 13.805 Social Security-Survivor's Insurance)

Dated: February 22, 1991.

Barbara Cooper,

Deputy Executive Director, Advisory Council on Social Security.

[FR Doc. 91–4644 Filed 2–27–91; 8:45 am]

BILLING CODE 4120-01-M

Health Resources and Services Administration

Program Announcement and Proposed Review Criteria for Grants for Nurse Anesthetist Education Programs

The Health Resources and Services Administration (HRSA) announces that applications will be accepted for fiscal year 1991 for Grants for Nurse Anesthetist Education Programs and invites comments on the proposed review criteria stated below.

Section 831(a) of the Public Health Service Act authorizes grants to public or private nonprofit institutions to cover the costs of:

1. Traineeships for licensed registered nurses to become nurse anesthetists; and
2. Projects to develop and operate programs for the education of nurse anesthetists.

This announcement addresses grants for projects to develop and operate programs for the education of nurse anesthetists.

To be eligible for a grant, an applicant must be a public or nonprofit institution accredited by an entity or entities designated by the Secretary of Education and must meet such requirements as the Secretary shall by regulation prescribe.

For purposes of this program eligible projects will be limited to proposals for developing and operating new programs. This is in keeping with the intent of Congress that additional nurse anesthetist education programs be created (Senate Report 101–516, p. 55). An application may be submitted for a project at any stage of program development beginning with the planning period but prior to the graduation of a class. Projects which include a planning period must, before the end of the first year of the project, complete the Capability Review required to achieve Preaccreditation Status from the Council on Accreditation of Nurse Anesthesia Educational Programs (AANA Council). Projects for Nurse Anesthetist Programs which have achieved Preaccreditation status from the AANA Council must have students enrolled or accepted for enrollment, to be eligible. Projects for programs which have graduated a class or will be graduating a class before a grant can be awarded are not eligible.

Approximately $450,000 is available in Fiscal Year 1991 for competing awards. It is anticipated that approximately 3 awards will be made at an average of $150,000 per grant.

The period of Federal support should not exceed three years.

National Health Objectives for the Year 2000

The PHS is encouraging applicants to submit proposals that address achievement of Healthy People 2000: National Health Promotion and Disease Prevention Objectives, (a recent Departmental report), as applicable. In developing your application for this program, please consider the 22 priority areas set.forth in the report. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

Training and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between Public Health Service supported education programs and service programs which provide comprehensive primary care services to the underserved.

Proposed Review Criteria

The HRSA proposes to review applications taking into consideration the following criteria:

1. The national or special local need which the particular project proposes to serve with special emphasis on meeting shortages in underserved areas;
2. The potential effectiveness and impact of the proposed project including its potential contribution to nursing;
3. The administrative and managerial capability of the applicant to carry out the proposed project;
4. The appropriateness of the plan, including the timetable, for carrying out the activities of the proposed project and achieving and measuring the project's stated objectives;
5. The capability of the applicant to carry out the proposed project;
6. The reasonableness of the budget for the proposed project, including the justification of the grant funds requested; and
7. The potential of the project to continue on a self-sustaining basis after the period of grant support.

Interested persons are invited to comment on the proposed review criteria. Normally the comment period would be 60 days but due to the need to implement any changes for the fiscal year 1991 award cycle, this comment period has been reduced to 30 days. All comments received on or before April 1, 1991 will be considered before the final review criteria are established. No funds will be allocated or final selections made until a final notice is published stating whether the final review criteria will be applied.

Written comments should be addressed to:

Acting Director, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 5C–26, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Nursing, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours at 8:30 a.m. and 5 p.m.

The application deadline date is April 30, 1991. Applications shall be considered as meeting the deadline date if they are either:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline and received in time for submission to an independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

Requests for application materials and questions regarding business management issues and grants policy should be directed to:

Grants Management Officer, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6915.

Application materials should be mailed to the Grants Management Officer at the above address.

Questions regarding programmatic information should be directed to:

Chief, Nursing Education Practice Resources Branch, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 5C–13, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–5763.

The standard application form and general instructions, PHS 6025–1, HRSA Competing Training Grant Application for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060. The supplemental instructions are in process of being submitted for review.

This program is listed at 93.916 in the *Catalog of Federal Domestic Assistance* and is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: January 23, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91–4731 Filed 2–17–91; 8:45 am]

BILLING CODE 4160–15–M

Indian Health Service

Cessation of Services to Terminated Utes

AGENCY: Indian Health Service (IHS).

ACTION: Notice of cessation of services to terminated Utes.

SUMMARY: The IHS is correcting a regional policy of providing services to descendants of terminated Utes. The regional practice of deeming descendants of terminated Utes eligible for IHS services has been determined to be contrary to the purpose of the Ute Termination Act 25 U.S.C. 677, as we interpret that Act, and, therefore, descendants of such terminated Utes are outside the scope of authorized IHS services.

DATES: Effective May 29, 1991.

FOR FURTHER INFORMATION CONTACT: Richard J. McCloskey, Indian Health Service, 5600 Fishers Lane, 8A–23, Rockville, Maryland 20875, telephone: (301) 443–1116. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The Ute Partition and Termination Act of 1954 (the Act) Public Law 83–671, 25 U.S.C. 677 et seq. provided for the partition and distribution of the assets of the Ute Tribe of the Unitah and Ouray Reservation, Utah, between the mixed-blood and the full-blood members and for the termination of the mixed-blood's status as Indians. Pursuant to the requirements of the Act, the Secretary of the Interior prepared the final rolls listing the full-blood and mixed-blood members of the Ute Tribe. These rolls were published in the **Federal Register** on April 5, 1956. 21 FR 2208. The Act provided that upon publication of the rolls, "the tribe shall thereafter consist exclusively of full-blood members." The legislative history of the Act and the broader termination and assimilation policy, of which it was a part, reflect a congressional intent to end the Federal Government's ongoing relationship with the mixed-blood portion of the Ute Tribe. Such an assimilation could not be achieved through a statute which terminated the federal supervision of mixed-blood Utes for a single generation only. This statutory purpose is reflected in the terms of the Act, the distribution of property to mixed-bloods, and the removal of restrictions for mixed-bloods on individually owned property.

The regional practice of serving descendants of mixed-blood Utes primarily at the Fort Duchesne Clinic in Utah, is contrary to longstanding IHS policy of not considering Indians terminated by Congress and their descendants (including mixed-blood members of the Ute Indian Tribe) to be eligible for IHS services (See Chapter 2–1.7 of the IHS Manual "Terminated Tribes"). This policy has been objected to by the Ute Tribe and the Bureau of Indian Affairs, prompting a review by the IHS. This review has determined that descendants of mixed-blood Utes are outside the scope of authorized IHS services as we interpret the Act. Therefore, the purpose of this notice is to withdraw IHS services from those terminated Utes currently receiving treatment from IHS in a manner that provides such patients adequate and reasonable time to secure another source of medical treatment. In order to accomplish this we are implementing the following procedures:

1. Terminated and descendants of terminated mixed-blood Utes who are presently inpatients in IHS facilities shall continue to be hospitalized until the need for hospitalization has ended. The determination as to when hospitalization is no longer needed shall be made by the patient's physician and be based upon the medical circumstances of each patient. These patients shall be notified that after discharge they will no longer be eligible for services as IHS beneficiaries except for necessary follow-up services and should be assisted in locating other health care providers. The need for necessary follow-up services will be determined by the responsible IHS or tribal physician, all other conditions being met including medical priorities.

2. Terminated and descendants of terminated mixed-blood Utes who were regarded as beneficiaries prior to the effective date of this Notice and who are presently undergoing a course of outpatient treatment may not be given further treatment unless, in the judgment of the medical officer in charge, immediate termination of treatment would threaten the life of or seriously impair the health of the patient. These patients shall also be notified that they are no longer eligible for services as IHS beneficiaries and should be assisted in locating other health care providers.

3. After the effective date of this Notice, no further initial authorization of contract health services will be made for any services provided after such date to terminated and descendants of terminated mixed-blood Utes.

4. Terminated and descendants of terminated mixed-blood Utes who were provided services prior to the effective date of this Notice and who are presently receiving inpatient contract care authorized under regulations as 42 CFR 36.21 et seq., may be authorized additional inpatient contract health services, within medical priorities until the need for hospitalization has ended. No outpatient contract health care shall be authorized for these individuals after the effective date of this Notice.

Outpatient contract health care authorized for these individuals before the effective date of this Notice shall be honored. These patients shall be notified that after discharge or completion of their previously authorized outpatient contract health care, they will no longer be eligible for services as IHS beneficiaries and will be assisted in locating other health care providers. The need for necessary follow-up services will be determined by the responsible IHS or tribal physician, all other conditions being met including medical priorities.

This notice makes no substantive change with respect to the eligibility of Indians for IHS services. It also does not preclude treatment of non-beneficiaries on a fee or other basis where otherwise authorized by law. Examples are treatment of non-beneficiaries in case of emergency authorized by section 322(b) of the Public Health Service Act, and regulations at 42 CFR 36.14 (1986); or under section 713 of Public Law 100–713, the 1988 Amendments to the Indian Health Care Improvement Act.

Those under treatment for chronic degenerative conditions may be provided additional treatment at Indian Health Service expense for no longer than 1 year beyond the effective date of this Notice notwithstanding any determination that it was otherwise safe to transfer treatment to other providers, all other conditions being met including medical priorities.

This Notice will be posted in the public area of the Fort Duchesne Clinic in Utah, as well as all other IHS facilities, whether operated by IHS or an Indian tribe under authority of Public Law 93–638.

Finally, every reasonable effort will be made at the Fort Duchesne Service Unit to provide a copy of this notice to all descendants of mixed-blood Utes currently undergoing treatment at the clinic/and to assist them in locating other health care providers.

Dated: January 18, 1991.

Everett R. Rhoades,

Assistant Surgeon General, Director.

[FR Doc. 91–4645 Filed 2–27–91; 8:45 am]

BILLING CODE 4160–16–M

Public Health Service

Office of the Assistant Secretary for Health, Title III, Part D, of the Public Health Service Act; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority to the Assistant Secretary for Health on January 14, 1981, by the Secretary of Health and Human Services, the Assistant Secretary for Health has delegated to the Administrator, Health Resources and Services Administration, all of the authorities under title III, part D, of the Public Health Service Act, as amended, pertaining to Primary Health Care, excluding the authorities to issue regulations, to submit reports to Congress or a congressional committee, to establish advisory committees or councils, or to appoint members to advisory committees or councils.

Redelegation

This authority may be redelegated.

Prior Delegations

All previous delegations and redelegations under title III of the Public Health Service Act shall continue in effect, provided they are consistent with this delegation.

Effective Date

This delegation became effective on February 13, 1991.

Dated: February 13, 1991.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 91–4653 Filed 2–27–91; 8:45 am]

BILLING CODE 4160–15–M

NATIONAL INSTITUTES OF HEALTH

Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HN, (National Institutes of Health) of the Statement of Organization, Functions and Delegations of Authority for the for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 55 FR 248, December 26, 1990) is amended to reflect the following change in the Office of Administration (HNA7), Office of the Director, NIH: (1) Retitle the Division of Management Survey and Review (HNA78) to the Division of Management Assessment and Internal Control (HNA78) and revise its functional statement. This retitling and functional statement revision will more clearly identify the Division's expanded roles and responsbilities.

Section HN–B, Organization and Functions, is amended as follow: (1) Under the heading Office of Administration (HNA7), Division of Management Survey and Review (HNA78), delete the divisional title and functional statement in their entirety and substitute the following:

Division of Management Assessment and Internal Control (HNA78). (1) Has overall responsibility for all matters related to internal controls to prevent fraud, waste, abuse and conflict of interest or the appearance of these, and develops a planned management oversight activity that focuses on early identification and prevention of such occurrences; (2) provides broad management oversight and advice to the Associate Director for Administration (ADA) on strategies for management reviews in both program and administrative areas, preventive maintenance strategies, and corrective action; (3) keeps abreast of activities within the Institutes, Centers, and Divisions (ICDs), advising them on the implementation of necessary internal controls; (4) in consultation with the Director, NIH, and the Associate Director for Administration, develops internal control policy for the entire NIH and ensures that policy changes are implemented; (5) serves as HIH's central liaison on matters involving the Office of the Inspector General, DHHS, the General Accounting Office, the DHHS Office of Audit, the Federal Bureau of Investigation, congressional staff members, etc., related to internal controls and audits; (6) develops and implements the Annual Internal Control Plan; and (7) advises NIH's top management staff on major management decisions in the field of current operations and long-range policy involving NIH management controls.

This reorganization is effective on the date of the selection of the Director, Division of Management Assessment and Internal Control.

Dated: February 12, 1991.

William F. Raub,

Acting Director, NIH.

[FR Doc. 91–4623 Filed 2–27–91; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–91–3217]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is

soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Wendy Sherwin, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

This Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency from number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 14, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Lease and Grievance Requirements 24 CFR part 966, subparts A and B.

Office: Public and Indian Housing.

Description of the Need For the Information and its Proposed Use: This collection covers the record-keeping requirements incidental to the implementation of Federal regulations at 24 CFR Part 966 governing dwelling lease and grievance procedures in public housing. The information is retained by the public housing agencies that manage public housing and is used for operational purposes.

Form Number: None.

Respondents: Individuals or Households and State or Local Governments.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Recordkeeping	1,233,775		1.135		3.5919		50,301

Total Estimated Burden Hours: 50,301.

Status: Reinstatement.

Contact: Edward C. Whipple, HUD, (202) 708–0744. Wendy Sherwin, OMB, (202) 395–6880.

Dated: February 14, 1991.

[FR Doc. 91–4695 Filed 2–27–91; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–91–3218]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESS: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Wendy Sherwin, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the toal numbers of hours needed to prepare the information submission including numer of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 20, 1991

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Cooperative Membership Exhibit.

Office: Housing.

Description of the Need For the Information and its Proposed Use: This form is needed to list the prospective cooperative members. It indicates the identification number of the property, the number of rooms, the unit cost, the down payment, and the monthly unit payment for each prospective member. The form is used as evidence of compliance of selling the property or project to an eligible cooperative group.

Form Number: HUD–93203.

Respondents: Individuals or Households.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-93203	300		1		.5		150

Total Estimated Burden Hours: 150.
Status: Extension.
Contact: Kerry J. Mulholland, HUD, (202) 708–0283. Wendy Sherwin, OMB, (202) 395–7285.

Dated: February 20, 1991.

Proposal: Community Development Block Grants: State's Program.

Office: Community Planning and Development.

Description of the Need for the Information and Its Proposed Use: Section 104 (A) and (D) of the Housing Community Development Act of 1974, as amended, requires states to submit to HUD a final statement and a performance and evaluation report annually concerning the use of funds made available under Section 106 of the act for HUD to determine statutory compliance.

Form Number: None.
Respondents: State or Local Governments.
Frequency of Submission: Annually.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Annual Reporting	49		1		351		17,199

Total Estimated Burden Hours: 17,199.
Status: Reinstatement.
Contact: Richard J. Kennedy, HUD, (202) 708–1322. Wendy Sherwin, OMB, (202) 395–6880.

Dated: February 20, 1991.

[FR Doc. 91–4696 Filed 2–27–91; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–020–01–5410–AZFA; AZA–23560]

Gila and Salt River Meridian, Arizona; Realty Action

ACTION: Notice of receipt of conveyance of mineral interest application AZA–23560.

Notice is hereby given that pursuant to Section 209 of the Act of October 21, 1976, 90 Stat. 2757, ANAM, Inc., has applied to purchase the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 6 S., R. 12 E.,
Sec. 33, S½S½;
Sec. 34, S½.
T. 7 S., R. 11 E.,
Sec. 25, all.
T. 7 S., R. 12 E.,
Sec. 3, lots 1, 2, S½NE¼.
T. 7. S., R. 13 E.,
Sec. 12, S½;
Sec. 13, E½;
Sec. 27, SW¼SW¼.
T. 7. S., R. 14 E.,
Sec. 17, E½, S½ NW¼, SW¼;
Sec. 21, N½NW¼;
Sec. 26, S½NW¼, S½;
Sec. 27, W½;
Sec. 28, E½, SW¼;
Sec. 29, N½, N½SW¼, SE¼SW¼, SE¼;
Sec. 30, NE¼NE¼;
Sec. 31, lots 1 to 4, incl., SE¼SW¼, S½SE¼;
Sec. 32, W½;
Sec. 33, W½, SE¼;
Sec. 35, N½N½, SE¼NE¼, SW¼NW¼.
T. 8 S., R. 13 E.,
Sec. 8, E½;
Sec. 9, S½;
Sec. 11, E½;
Sec. 12, SW¼NW¼, W½SW¼, SE¼SW¼;
Sec. 13, N½N½;
Sec. 14, SW¼, S½SE¼;
Sec. 15, E½SW¼, W½SE¼;
Sec. 22, all;
Sec. 23, E½NE¼, SW¼NE¼, N½NW¼, SW¼NW¼, S½;
Sec. 25, all;
Sec. 26, N½;
Sec. 27, all.
T. 8 S., R. 14 E.,
Sec. 2, S½;
Sec. 5, all;
Sec. 6, lot 6, NE¼SW¼;
Sec. 7, E½;
Sec. 8, all;
Sec. 11, N½;
Sec. 14, all;
Sec. 18, lot 1, NE¼, NE¼NW¼;
Sec. 20, W½;
Sec. 22, SE¼;
Sec. 23, S½S½;
Sec. 24, E½, SW¼;
Sec. 26, N½N½;
Sec. 27, NE¼;
Sec. 29, N½NW¼;
Sec. 30, NE¼, N½SE¼.

Containing 15,207.25 acres, more or less.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from October 5, 1990.

Dated: February 7, 1991.

Henri R. Bisson,
District Manager.

[FR Doc. 91–4719 Filed 2–27–91; 8:45 am]
BILLING CODE 4310–32–M

[AZ–920–01–4212–14; AZA–23858]

Arizona; Conveyance of Public Land in Yavapai County

February 20, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of the conveyance of public land to George A. Guirguis and Tafida Y. Guirguis.

FOR FURTHER INFORMATION CONTACT: Mary Jo Yoas, BLM, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011. Telephone (602) 640–5534.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976, (43 U.S.C. 1713, 1719), George A. Guirguis and Tafida Y. Guirguis have

purchased by competitive sale for $81,500.00 the following described land:

Gila and Salt River Meridian, Arizona

T. 8 N., R. 5 W.,
Sec. 15, NW¼NW¼.

The area described contains 40.00 acres in Yavapai County, Arizona.

The purpose of this notice is to inform the public and interested State and local government officials of the transfer of this land out of Federal ownership.

Angela Mogel,

Acting Chief, Branch of Lands Operations.

[FR Doc. 91-4720 Filed 2-27-91; 8:45 am]

BILLING CODE 4310-32-M

[CO-030-01-4410-08]

Colorado; Availability of Draft Resource Management Plan and Environmental Impact Statement for the Gunnison Resource Area

AGENCY: Bureau of Land Management, Interior.

ACTION: The Bureau of Land Management, Montrose District, has prepared a draft resource management plan and associated draft environmental impact statement (DRMP/EIS) for the Gunnison Resource (GRA) in accordance with the Federal Land Policy and Management Act of 1976 (FLPMA) and 43 CFR part 1600. This document is now available to the public for review and comment.

SUMMARY: A DRMP/EIS has been developed for the GRA. This plan, when finalized, will replace and supersede the two existing land use plans and other various related environmental documents for the GRA. This plan will provide the overall framework for managing and allocating BLM-administered land resources in the GRA over the next 10 to 12 years. Located in west-central Colorado, the GRA encompasses 585,012 acres of federal surface estate and a total of 728,567 acres of federal subsurface mineral estate within Gunnison, Hinsdale, Montrose, Saguache, and Ouray Counties.

DATES: The public review and comment period for the DRMP/EIS will begin on March 1, 1991, and will run through May 31, 1991. The BLM invites interested or affected parties to provide written comments on the DRMP/EIS prior to the May 31, 1991, closing date. In order to be considered, comments must be received by the close of business (4:30 p.m.) on the May 31, 1991, closing date. The public is also invited to attend two formal public hearings and make oral comments on the DRMP/EIS. The hearings will be held on April 17, 1991, in Gunnison and on April 18, 1991, in Lake City, Colorado. Both hearings will start at 7:30 p.m., and a record of each hearing will be prepared. The public is also invited to an informal open house session prior to each hearing to give individuals an opportunity to meet with BLM representatives to discuss and ask questions about the contents of the DRMP/EIS. These open house sessions will be from 6:30 p.m. to 7:30 p.m. The hearings will be held at the Gunnison County Commissioners' meeting room, Gunnison County Courthouse, 200 East Virginia Avenue in Gunnison, and at the Hinsdale County Commissioners' meeting room, Hinsdale County Courthouse, 317 North Henson Street, in Lake City.

FOR FURTHER INFORMATION CONTACT: Interested parties may obtain a copy of the draft document by writing to Bill Bottomly, Gunnison RMP Team Leader, Bureau of Land Management, 2505 South Townsend Avenue, Montrose, Colorado 81401, or by calling Mr. Bottomly at (303) 249-6047. Copies may also be obtained from the Gunnison Resource Area Office, 216 North Colorado Street, Gunnison, Colorado 81230; or the Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215. Interested parties who wish to make written comments on the DRMP/EIS are requested to send them to Bill Bottomly, Gunnison RMP Team Leader, Bureau of Land Management, 2505 South Townsend Avenue, Montrose, Colorado 81401, by the close of business on May 31, 1991.

SUPPLEMENTARY INFORMATION: Some of the highlights of the DRMP/EIS are as follows:

1. The plan focuses on the principles of multiple use and sustained yield as mandated by section 202 of FLPMA. Decisions within the plan cover a 10 to 12-year period. The plan directs future resource condition objectives, land use allocations, and management actions on BLM-administered lands within the Gunnison Resource Area. The DRMP/EIS describes five different management alternatives and presents an analysis of the environmental consequences of implementing each. These alternatives are:

Alternative A (Continuation of Current Management Alternative): Continues the present mix of multiple-use resources, maintaining outputs and output rates, and protection activities; assumes a continuation of current funding and staffing. This alternative corresponds to the No Action Alternative required by the National Environmental Policy Act (NEPA).

Alternative B: Emphasizes the management of resources compatible with promoting outdoor recreation, tourism, economic stability, and the general quality of life.

Alternative C: Emphasizes a high degree of economic return and resource production, while maintaining, protecting, or enhancing natural values at a compatible, nonrestricting level.

Alternative D: Emphasizes a high degree of protection, enhancement, and maintenance for natural values, while sustaining compatible levels of production for renewable and nonrenewable resources.

Alternative E (Preferred Alternative): Consists of the mix and variety of actions which, in the opinion of the Area Manager and the Team Members, best resolve the issues or concerns, and attempts to achieve a balance of competing uses; would continue multiple-use management by protecting important environmental values and sensitive resources while allowing development of resources which provide important goods and services.

The range of alternatives was limited to those considered to be reasonable and implementable.

2. Sixteen (16) potential Areas of Critical Environmental Concern (ACECs) were identified early in the planning process. Six (6) of the sixteen potential ACECs would be designated as ACECs in Alternative E (Preferred Alternative). These six areas are listed below.

(a) American Basin ACEC, a 1595-acre area recommended for scenic, recreation, and natural values.

(b) Redcloud Peak ACEC, a 5947-acre area recommended for management and protection of existing habitat and populations of the Uncompahgre fritillary butterfly, a U.S. Fish and Wildlife Service (USF&WS) "Category One" listed species.

(c) Slumgullion Earthflow National Landmark ACEC, a 1407-acre area recommended as an outstanding example of the geologic phenomenon of mass wasting.

(d) West Antelope Creek ACEC, a 28,215-acre area recommended for the management and protection of crucial habitat, important for the viability of wintering elk and deer and some bighorn sheep.

(e) South Beaver Creek ACEC, a 4565-acre area recommended for the management and protection of scattered populations of skiff milkvetch (*Astragalus microcymbus*), a USF&WS and Colorado sensitive plant species.

(f) Dillon Pinnacles ACEC, a 532-acre area recommended for scenic and recreational values.

In Alternative B, five ACECs, and one Research Natural Area/Area of Critical Environmental Concern (RNA/ACEC) would be designated, and in Alternative D, eight ACECs and two RNA/ACECs would be designated. The potential ACECs are described in Appendix H of the DRMP/EIS. The designation recommendations are contained in the descriptions of each alternative in chapter Three.

During the RMP planning process, a Wild and Scenic River Study was conducted on the Lake Fork of the Gunnison River. The study report is included as Appendix I in the DRMP/EIS. The study concluded that a 13.3-mile segment is eligible, but not suitable, for designation and inclusion into the National Wild and Scenic River System (NW&SRS). The segment was considered for inclusion into the NW&SRS in Alternatives B and D. Other streams were also examined.

All substantive written and verbal comments regarding the DRMP/EIS will be analyzed in the preparation of the proposed resource management plan and final environmental impact statement (PRMP/FEIS). Teh PRMP/FEIS is tentatively scheduled to be completed late in 1991.

Dated: February 4, 1991.

Bob Moore,

State Director.

[FR Doc. 91-3666 Filed 2-27-91; 8:45 am]

BILLING CODE 4310-JB-M

[CO-030-91-4351-08-1617]

Planning Amendment; San Juan-San Miguel Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to modify a resource management plan (RMP).

SUMMARY: Notice is hereby given, that the Uncompahgre Basin Resource Area is initiating two actions which will modify the San Juan-San Miguel RMP.

1. Administrative Action

Designation of the Tabeguache Outstanding Natural Area (ONA) as an Area of Critical Environmental Concern (ACEC). The Tabeguache ONA was not formally identified as an ACEC in the RMP approved in 1985. Current guidance requires ONA's to also be designated as ACEC's. This designation will not alter the analysis presented in the RMP, land use decisions, or current management of the area. Notice is hereby given that the Area is designated as the Tabeguache ACEC/ONA.

2. Planning Amendment

In accordance with 43 CFR subpart 1610.2, the Uncompahgre Basin Resource Area, of the Montrose District will begin, on the date of this notice, analysis of a public nomination to designate 21,500 acres of the upper San Miguel River as an Area of Critical Environmental Concern (ACEC). The proposed San Miguel River ACEC, designed to protect high value reparian systems, would include public lands, on the San Miguel River, from Leopard Creek downstream to Horsefly Creek. Public land on the tributary streams of Beaver, Saltado, Horsefly, and Leopard Creeks will be considered for inclusion in the ACEC. Adjacent public lands form Placerville, Colorado, upstream to Willow Creek, and from Horsefly Creek downstream to Pinyon, Colorado, will be included in the planning analysis. This proposed amendment would also establish land use decisions for 2,832 acres of lands acquired, in 1990, through exchange with a private landowner. Public comments will be accepted for 60 days from the date of this notice, and one "open house" for public comment is scheduled for April 3, 1991, at the Placerville, Colorado, school building, from 10 a.m. until 8 p.m.

ADDRESSES: For further information, contact James Ferguson, Bureau of Land Management, Uncompahgre Basin Resource Area, 2505 South Townsend Avenue, Montrose, CO 81401; Telephone (303) 249-6047.

SUPPLEMENTARY INFORMATION: Documents pertinent to this proposal may be examined at the address shown above. One issue has been identified: Recreation and resource use vs. riparian and scenic values. Additional factors to be considered include the level and intensity of recreation management, grazing of livestock, management of the mineral estate, tansportation and utility corridors, off-highway vehicle designations, and forest product disposal. The following disciplines will be represented on the BLM planning team: Wildlife management, fisheries management, range management, forestry, geology, realty, soils, and hydrology.

Planning criteria include: Policy, legal, and regulatory constraints, as well as requirements to maintain riparian vegetation quality, maintain scenic values, maintain recreational values and meet recreation demands, determine the level of management intensity required, determine the need for land or easement acquisition, and set management objectives to protect the priority resources within the proposed ACEC.

Dated: February 13, 1991.

Alan L. Kesterke,

District Manager.

[FR Doc. 91-4721 Filed 2-27-91; 8:45 am]

BILLING CODE 4310-JB-M

Minerals Management Service

Outer Continental Shelf Advisory Board; Meeting of the Gulf of Mexico Regional Technical Working Group

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Gulf of Mexico Regional Technical Working Group (RTWG) meeting.

SUMMARY: Notice of this meeting is issued in accordance with the Federal Advisory Committee Act (Pub. L. No. 92-463). The Gulf of Mexico RTWG meeting will be held April 2-3, 1991, 9 a.m. to 5 p.m., at the Minerals Management Service Offices, 1201 Elmwood Park Boulevard, New Orleans, Louisiana.

The RTWG business meeting will be held in conjunction with the Environmental Studies meeting. Tentative agenda items are as follows:

- Roundtable Discussion
- Naturally Occurring (Low-Level) Radioactive Material (NORM)
- 5-Year Program
- Summary of Recently Passed Legislation that will Affect the Gulf of Mexico

FOR FURTHER INFORMATION: This meeting is open to the public. Individuals wishing to make oral presentations to the committee concerning agenda items should contact Ann Hanks of the Gulf of Mexico OCS Regional Office at (504) 736-2589 by March 15, 1991. Written statements should be submitted by the same date to the Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123. A transcript and complete summary minutes of the meeting will be available for public inspection in the Office of the Regional Director at the above address not later than 60 days after the meeting.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico RTWG is one of six such Committees that advises the Director of the Minerals Management Service on technical matters of regional concern regarding offshore prelease and postlease sale activities. The RTWG membership consists of representatives from Federal agencies, the coastal States of Alabama, Florida, Louisiana,

Mississippi, and Texas, the petroleum industry, the environmental community, and other private interests.

Dated: February 15, 1991.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 91–4722 Filed 2–27–91; 8:45 am]

BILLING CODE 4310–MR–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31774]

Tenneco Inc.—Control Exemption—Marinette, Tomahawk & Western Railroad Co. and Valdosta Southern Railroad

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Commission exempts under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, the acquisition of control by the Corinth and Counce Railroad Company, and the acquisition of indirect control by Packaging Corporation of America, and, in turn, Tenneco Inc., of the Marinette, Tomahawk & Western Railroad Company, and the Valdosta Southern Railroad, subject to standard labor protective conditions.

DATES: The exemption will be effective on March 30, 1991. Petitions for stay must be filed by March 11, 1991, and petitions for reconsideration must be filed by March 20, 1991.

ADDRESSES: Send pleadings referring to Finance Docket No. 31774 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington DC 20423

(2) Petitioner's representative: Michael W. Meyer, 1010 Milam, Houston, TX 77001

Fritz R. Kahn, The McPherson Bldg., suite 700, 901 15th St., NW., Washington, DC 20005–2301

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 obtain 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.

Decided: February 19, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald. Commissioner McDonald did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–4776 Filed 2–27–91; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Federal Prison Industries, Inc., UNICOR Independent Market Study Briefings

AGENCY: Federal Prison Industries, Inc., Bureau of Prisons, Justice.

ACTION: Notice.

SUMMARY: Efforts are underway to complete an independent market study of UNICOR, based on the objectives set forth in Public Law 101–515 and the statement of work RFP 1PI–003–91, as announced in the **Federal Register** on December 7, 1990 (55 FR.50618). To ensure that all interested parties have ample opportunity to provide their comments and suggestions related to the study, two briefings have been scheduled. The first briefing will focus on the overall study approach and task activities, as well as potential interviewees and data sources. The second briefing will focus on the interpretation of the source data and information gathered through April 1, 1991. During the course of the study, written comments and suggestions may be submitted prior to the release of the interim report on May 1, 1991.

DATES: The briefings are scheduled as follows:

1. March 5th (Tuesday)—1 p.m. to 3 p.m.
2. April 2nd (Tuesday)—1 p.m. to 4:30 p.m.

ADDRESSES: The March 5th briefing will be held in the Pennsylvania Avenue location of Delotte & Touche, at 1001 Pennsylvania Avenue, NW., suite 350, Conference Room A, Washington, DC. The location of the April 2nd briefing will be announced at a later date. Comments and suggestions on the market study may be sent to John C. Foreman, Deloitte & Touche, 1900 M Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: James Hagerty (202) 508–8554.

Dated: February 22, 1991.

James Hagerty,

Manager, Market Research, Federal Prison Industries, Inc.

[FR Doc. 91–4677 Filed 2–27–91; 8:45 am]

BILLING CODE 4410–05–M

DEPARTMENT OF LABOR

Employment and Training Administration

Andrea Sportswear, et al.; Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of February 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–25,019; Andrea Sportswear, Fall River, MA

TA–W–25,181; Piezo Electric Products, Metuchen, NJ

TA–W–24,971; Fairfield Textile Corp., Fairfield, NJ

TA–W–25,039; Chrysler Corp., Warren Stamping Plant. Warren, MI

TA–W–25,293; Mannington Ceramic Tile, Mt. Vernon, TX

TA–W–25,250; Extrudart Metal Products, Cohoes, NY

TA–W–24,982; Unisys Corp., Paoli, PA

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA–W–25,206; Kelley-Coppedge, Inc., Fort Worth, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–25,158; Burro Crane, Chicago, IL

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,308; Bivouac Automotive Corp., Vandalia, MI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-24,927; The Trane Co., Trenton, NJ

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-25,346; Marriott Corp., Woodstock, CT

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,215; Performance Semiconductor Corp., Bloomington, MN

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

Affirmative Determinations

TA-W-25,220; Encore Shoe Corp., Sanford, ME

A certification was issued covering all workers separated on or after December 5, 1989.

TA-W-25,201; Encore Shoe Corp., Rochester, NH

A certification was issued covering all workers separated on or after December 5, 1989.

TA-W-25,202; Encore Shoe Corp., Newport, NH

A certification was issued covering all workers separated on or after December 5, 1989

TA-W-25,099; National-Standard Co., Machine Systems Div., Rome, NY

A certification was issued covering all workers separated on or after October 1, 1990.

TA-W-24,996; Billie Jo Sportswear, Inc., New York, NY

A certification was issued covering all workers separated on or after October 17, 1989.

TA-W-25,110; Aberdeen Sportswear, Inc., Trenton, NJ

A certification was issued covering all workers separated on or after October 7, 1989.

TA-W-25,190; Western Atlas International, Atlas Wireline Service, Houma, LA

A certification was issued covering all workers separated on or after November 27, 1989.

TA-W-25,148; Pyke Manufacturing Co., Lehi, UT

A certification was issued covering all workers separated on or after November 14, 1989.

TA-W-24,965; Wellman Thermal Systems, Shelbyville, IN

A certification was issued covering all workers separated on or after October 8, 1989.

TA-W-25,192; Wrangler Co., Orange, VA

A certification was issued covering all workers separated on or after December 3, 1989 and before October 15, 1990.

TA-W-25,193; Wrangler Co., Elkton, VA

A certification was issued covering all workers separated on or after December 3, 1989 and before October 15, 1990.

TA-W-25,188; Warnaco Knitwear Div., Altoona, PA

A certification was issued covering all workers separated on or after November 28, 1989.

TA-W-25,189; Warnaco Knitwear Div., Duncansville, PA

A certification was issued covering all workers separated on or after November 28, 1989.

TA-W-25,001; ISC-Bunker Ramo, Spokane, WA

A certification was issued covering all workers separated on or after November 5, 1990.

TA-W-25,069; Gates Mills, Inc., Johnstown, NY

A certification was issued covering all workers separated on or after September 21, 1989.

TA-W-24,883; R.E. Dietz Co., Syracuse, NY

A certification was issued covering all workers separated on or after September 11, 1989.

TA-W-25,194; Amoco Corp., Technical Support, Operating at Amoco Production Co., New Orleans Regional Office, New Orleans, LA

A certification was issued covering all workers separated on or after November 29, 1989.

TA-W-25,195; Amoco Corp., Technical Support, Operating at Amoco Production Co., Denver Regional Office, Denver, CO

A certification was issued covering all workers separated on or after November 29, 1989.

I hereby certify that the aforementioned determinations were issued during the month of February, 1991. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: February 19, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-4705 Filed 2-27-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24,970]

Donora Sportswear Co., Donora, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Donora Sportswear Company, Donora, Pennsylvania. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-24,970; Donora Sportswear Company, Donora, Pennsylvania (February 19, 1990)

Signed at Washington, DC this 19th day of February, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91- Filed 2-27-91: 8:45 am]

BILLING CODE 4510-30-M

Identification of Qualified Sources To Administer Training and Employment Programs

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration, seeks to identify qualified sources which currently operate national level Multi-State training and employment programs servicing the specialized needs of disabled individuals across the country for the possibility of participating in the Department of Labor's Job Training Partnership Act (JTPA) National Partnership Program and on its National Training Demonstration Program.

DATES: Interested organizations should submit the information requested in this notice by March 20, 1991.

FOR FURTHER INFORMATION CONTACT: Charlotte A. Adams; Telephone: (202) 535-8702 (this is not a toll-free number).

ADDRESSES: Responses to the notice should have all the information required

in this notice above and should be mailed to Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, 200 Constitution Avenue, NW., Rm C–4305, Washington, DC 20210. Attention: FR–SOURCES SOUGHT DESK. Acknowledgment of receipt will not be made, nor will telephone inquiries be honored.

SUPPLEMENTARY INFORMATION: The Employment and Training Administration, seeks to identify qualified sources which currently operate national level Multi-State training and employment programs serving the specialized needs of disabled individuals across the country for the possibility of participating in the Department of Labor's Job Training Partnership Act (JTPA) National Partnership Program and on its National Training Demonstration Program. Section 451 of Title IV, Part D of the Job Training Partnership Act (JTPA) authorizes the Secretary of Labor to make funds available to conduct training and employment programs for disabled individuals to assist in eliminating artificial and other barriers faced by such persons. The general purpose of these programs is to increase the number and quality of job opportunities for disable individuals by providing specialized outreach service, tailored training, job development, and job placement. To enhance as well as supplement the services made available to these individuals, the program must have close linkages with local rehabilitation agencies and facilities.

The Employment and Training Administration (ETA) currently awards grants to the following non-profit organizations to provide services to the specific client groups:

Association for Retarded Citizens—Provides on-the-job training in a variety of occupations for mentally retarded individuals through sub-grants with public and private employers throughout the nation. All trainees are judged to be "work-ready" by the Vocational Rehabilitation Agency, after successfully completing their training and before entering into unsubsidized employment.

Electronic Industries Foundation—Provides a national outreach, pre-employment counseling and job placement program and fosters new employment opportunities for disabled persons, providing a centralized job referral service with the electronic and other industries and rehabilitation agencies. The project operates on a national scale. Epilepsy Foundation of America—Provides screening and preemployment evaluation, support services, job seeking skills training, job search assistance and job placement tailored to the special needs of epileptics who are unemployed or underemployed. Project are operated on a national scale and the Commonwealth of Puerto Rico. Clients who require standardized testing are referred to the following resources, as appropriate: State Employment agency, Vocational Rehabilitation agency, Licensed Psychological Evaluators, and Licensed Neuropsychologists.

National Association of Rehabilitation Facilities—Develops and promotes on-the-job training programs in rehabilitation facilities on a national scale to individuals who are economically disadvantaged, disabled, displaced from the employment market, or otherwise unemployed and underemployed. NARF also provide job placement to disabled individuals.

Goodwill Industries of America—Provides employment and training programs for all disabled persons through a program of multi-occupational inhouse training. Job placement is provided through Goodwill Industries Facilities in various sites throughout the country. All individuals referred to the program must be certified as being handicapped by the State Vocational Rehabilitation Office.

National Federation of the Blind—Provides an applicant register, job announcements, counseling, job referrals and employer education seminars, and operates a job bank to promote the interests of the blind and place them in employment opportunities. The project operates on a national scale.

Mainstream, Inc.—This organization operates a project that conducts promotional activities to encourage employers to hire all persons with disabilities and provides information on workplace accommodations. It recruits and places disabled individuals through a variety of services and a computerized job bank system.

The International Association of Machinists Center for Administering Rehabilitation and Employment Services (IAM–CARES)—This organization operates programs to train and place persons with all disabilities. These services are provided to disable individuals on a national scale with a program designed specifically for disabled youth operating in Seattle, WA. In addition to regular training and placement activities, this project is aided by advisory groups with members from the private sector, labor and government and by the interest and assistance of Machinists Union members.

Non-profit organizations that conduct employment and training programs on a national scale (multi-state) to the specific client groups currently being serviced by these organizations are invited to respond to this sources-sought notice by submitting the following information:

(1) Capability statement of organization;

(2) Previous and current training and employment projects operated on a national scale;

(3) A description of professional personnel specifically qualified in the training and employment field outlined; and

(4) Any other available descriptive literature about the organization and its services.

No contracts will be made to clarify information submitted.

Note: This is not a Solicitation for Grant Applications and no selection for funding will result from this notice.

Signed at Washington, DC, this 22nd day of February, 1991.

Robert D. Parker,

ETA Grant Officer.

[FR Doc. 91–4707 Filed 2–27–91; 8:45 am]

BILLING CODE 4510–30–M

Attestations Filed by Facilities Using Nonimmigrant Aliens As Registered Nurses

AGENCY: Employment Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards

Administration, U.S. Department of Labor. The addresses of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, room S3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Regarding the attestation process: Chief, Division of Foreign Labor Certifications, U.S. Employment Service. Telephone: 202–535–0163 (this is not a toll-free number).

Regarding the complaint process: Chief, Farm Labor Programs, Wage and Hour Division. Telephone: 202–523–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H–1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1182(m). The regulations implementing the nursing attestation program are at 20 CFR part 655 and 29 CFR part 504, 55 FR 50500 (December 6, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 22nd day of February, 1991.

Robert A. Schaerfl,

Director, United States Employment Service.

Division of Foreign Labor Certifications Approved Attestations

[02/11/91 to 02/15/91]

CEO-Name	Phone	Facility name	State	Approval date
Mr. Jeff Ashin	602–969–9111	Mesa General Hospital, 515 No. Mesa Drive, Mesa, AZ 85201	AZ	02/15/91
Mr. Sam Pangburn	818–797–1141	St. Luke Medical Center, 2632 E. Washington Blvd., Pasadena, CA 91109.	CA	02/13/91
Mr. Bryan Burklow	714–547–2565	Doctors Hospital of Santa Ana, 1901 N. College Ave., Santa Ana, CA 92706.	CA	02/13/91
Mr. Bryan Burklow	714–554–1653	Santa Ana Hospital Medical Center, 1901 N. Fairview Street, Santa Ana, CA 92706.	CA	02/13/91
Mr. Charles H. Mason	415–872–5400	Mills-Peninsula Hospitals, 1783 El Camino Real, Burlingame, CA 94010.	CA	02/15/91
Mr. Robert M. Jarami	213–653–1958	Jaramillo Cares, Inc. dba Spe, 6404 Wilshire Blvd., Suite 720, Los Angeles, CA 90048.	CA	02/15/91
Mr. Edward J. Rosasc	305–285–2100	Mercy Hospital, 3663 Wouth Miami Avenue, Miami, FL 33133	FL	02/15/91
Mr. Ralph R. Aleman	305–545–8050	Victoria Hospital, 955 N.W. Third Street, Miami, FL 33128	FL	02/15/91
Mr. Gary K. Jajiwara	808–547–9450	Kuakini Health System, 347 N. Kuakini Street, Honolulu, HI 96817	HI	02/13/91
Mr. Romero Carino	312–338–1170	Progressive Services, Inc., 2600 W. Peterson Ave., Chicago, IL 60659.	IL	02/15/91
Mr. Fred Martinez, Jr	504–785–6242	St. Charles Parish Hospital, P.O. Box 87, Luling, LA 70070	LA	02/15/91
A. Jason Geisinger	617–233–8123	First Health Care Corp., d.b.a., Hammersmith House Nursing Care, Saugus, MA 01906.	MA	02/15/91
Mr. William R. Fried	201–854–5018	Palisades General Hospital, 7600 River Road, North Bergen, NJ 07047.	NJ	02/15/91
Mr. James Toomey	702–645–1900	El Jen Convalescent Hospital, 5530 W. Duncan Street, Las Vegas, NV 89130.	NV	02/15/91
Mr. David P. Rosen	718–262–6000	The Jamaica Hospital, 89th Avenue & Van Wyck Expressway, Jamaica, NY 11418.	NY	02/13/91
Mr. Keith Safian	914–631–5100	Phelps Memorial Hosp. Center, 701 No. Broadway, No. Tarrytown, NY 10591.	NY	02/13/91
Mr. Irwin M. Langer	718–945–7100	Peninsula Hosp. Center, 51–15 Beach Channel Drive, Far Rockaway, NY 11691.	NY	02/15/91
Mr. Robert K. Match	718–470–7000	Long Island Jewish Med. Center, 269–01 76th Ave., New Hyde Park, NY 11042.	NY	02/15/91
Ms. Sheila Blutstein	718–252–3000	Kings Highway Hosp. Center, Inc., 3201 Kings Highway, Brooklyn, NY 11234.	NY	02/15/91
Ms. Louise Kane	718–377–7900	Community Hospital of Brooklyn, 2525 Kings Highway, Brooklyn, NY 11229.	NY	02/15/91
Mr. Robert Stone	914–592–7555	Blythedale Children's Hospital, Bradhurst Avenue, Valhalla, NY 10595.	NY	02/15/91
Mr. Jacob Reingold	212–549–8700	Hebrew Home for the Aged at Riverdale/Palisade Nursing Home, Bronx, NY 10471.	NY	02/15/91
Sister Rita K. Kerr	212–548–1700	Frances Schervier Home and Ho, 2975 Independence Avenue, Bronx, NY 10463.	NY	02/15/91

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued

[02/11/91 to 02/15/91]

CEO-Name	Phone	Facility name	State	Approval date
Mr. Eddie A. George	713-467-6555	HCA Spring Branch Med. Center, 8850 Long Point, Houston, TX 77055.	TX	02/15/91

Number of Attestations: 24.

[FR Doc. 91-4667 Filed 2-27-91; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefits Administration

[Application Nos. D-8243 and D-8323]

Proposed Class Exemption for the Receipt of Certain Services by Individuals Establishing or Maintaining Individual Retirement Accounts or Retirement Plans for Self-Employed Individuals

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed class exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed class exemption from certain prohibited transaction restrictions of the Internal Revenue Code of 1986 (the Code). The proposed class exemption would permit the receipt of services at reduced or no cost by an individual establishing or maintaining an individual retirement account (IRA) or a retirement plan for a self-employed individual (Keogh Plan) from a bank, provided the conditions of the proposed exemption are met. If granted, the proposed exemption would affect individuals with a beneficial interest in the IRAs or Keogh Plans who receive such services, as well as the banks that provide the services.

DATES: Written comments and requests for a public hearing must be received by the Department on or before April 15, 1991.

EFFECTIVE DATE: If adopted, the proposed exemption would be effective as of the date of publication of the final exemption in the **Federal Register.**

ADDRESSES: All written comments and requests for a hearing (preferably at least three copies) should be sent to: Office of Exemption Determinations, Pension and Welfare Benefits Administration, room N-5649, Department of Labor, 200 Constitution Avenue, NW., Washington. DC 20201, Attention: "Relationship Banking" Exemption. The applications for exemption as well as all additional information and comments received from interested persons will be available for public inspection in the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, room N-5507, 200 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Allison Padams, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 523-7901 (this is not a toll-free number); or Susan E. Rees, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, (202) 523-9141 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This document contains a notice of pendency before the Department of a proposed class exemption from the sanctions resulting from the application of section 4975 (a) and (b), 4975(c)(3), and 408(e)(2) of the Code by reason of section 4975(c)(1) (D), (E) and (F) of the Code.[1] This proposal is the Department's response to applications filed on behalf of the American Bankers Association on November 14, 1989 and the Consumer Bankers Association on February 20, 1990 (together, the Applicants). The applications were filed under section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). In addition, this document contains proposals the Department is making on its own motion pursuant to the authority described above.

Section 4975(c)(1) (D), (E) and (F) of the Code prohibits the transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a plan; an act by a disqualified person who is a fiduciary whereby he deals with the income or assets of a plan in his own interest or for his own account; and the receipt of any consideration for his own personal account by any disqualified person who is a fiduciary for any party dealing with the plan in connection with a transaction involving the income or assets of the plan. The term "disqualified person", as defined in Code section 4975(e)(2), includes a fiduciary and a person providing services to the plan. Persons who exercise discretionary authority or control over the assets of a plan are fiduciaries subject to the prohibitions contained in section 4975 of the Code.[2] The receipt of reduced or no cost services by such an individual under an arrangement in which plan assets are taken into account for purposes of pricing the services is a prohibited transaction.[3] In the absence of an exemption, the individual who receives such services as a result of establishing or maintaining his or her IRA or Keogh Plan would benefit from the use of his or her plan's assets in violation of section 4975 of the Code.

In recognition of the business practice of providing premiums to encourage individuals to establish IRAs and Keogh Plans, the Department and the Internal Revenue Service (the Service; together, the Agencies) proposed a conditional class exemption in 1983 that would exempt the payment of cash, property, or other consideration by an organization authorized to sponsor IRAs or Keogh Plans to an individual establishing or contributing to an IRA or Keogh Plan (the 1983 Proposal).[4] The 1983 Proposal has not been finalized.[5]

Recently, the Department was contacted by representatives of the banking industry concerning the business practice of offering banking

[1] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

[2] See Section 4975(e)(3) of the Code.

[3] See Advisory Opinion 89-12A (July 14, 1989).

[4] See 48 FR 4592 (February 1, 1983). The exemption proposed in 1983 contemplated that the premiums offered would be in the form of a cash bonus or a gift item such as a toaster, blanket or other promotional merchandise with a limited cash value.

[5] With respect to final disposition of the 1983 Proposal, the Department recognizes that the offering of cash and premiums by financial institutions may no longer reflect current industry practices and that, therefore, the relief provided by the 1983 Proposal is not necessary. Accordingly, the Department is also publishing a notice in today's Federal Register soliciting comments regarding the need for the relief provided in the 1983 Proposal.

services at reduced or no cost as an inducement to customers to begin or expand banking relationships (i.e. a practice known as "relationship banking"). Specifically, inquiries were directed to the Department regarding the prohibited transaction implications of including IRA account balances for purposes of determining eligibility for relationship banking programs. At the same time, the Service was also contacted concerning the tax exempt status of IRAs whose account balances are included in such programs.

In response to these articulated concerns, the Service issued an IRA nonenforcement policy (the IRA Nonenforcement Policy),[6] which provides that the Service will not raise issues concerning the tax effects resulting from possible prohibited transactions arising from certain cash, property or services offered by financial institutions to individuals for whom the financial institution maintains certain IRAs and Keogh Plans.[7] The IRA Nonenforcement Policy is effective until the Department makes a final determination with respect to the class exemption request.

Accordingly, upon consideration of the record developed to date, the Department has decided to propose a class exemption, more fully described below, from the prohibited transaction restrictions of section 4975(c)(1)(D), (E) and (F) of the Code for the receipt of services at reduced or no cost by individuals in connection with the establishment or maintenance of an IRA or Keogh Plan.

Summary of Facts and Representations

The applications contain facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the applications on file with the Department for the complete representations of the Applicants.

1. The Applicants represent that relationship banking is widely practiced by banks as an inducement to customers to begin or expand their banking relationships with a particular institution. Relationship banking developed gradually throughout the 1980s in response to consumer demand as well as improvements in bank computer systems which permitted banks to track the various relationships an individual can have with a single institution. Relationship banking programs have been adopted by banks of all sizes throughout the country. These programs are not exclusively a money center or multi-state bank product and are as likely to be offered by a small community bank as a large, money center bank. However, the level of the relationship and the services included vary widely as different banks have set different marketing strategies.

2. The Applicants state that relationship banking programs price banking services according to an individual's total relationship to the bank. The objective of such programs is to expand the services an individual purchases from a bank by giving the customer the benefit of the economies of scale created by the level of the customer's business with the bank. The typical relationship banking program involves the establishment of a minimum qualifying level of account balances and the offering of an array of discounted or no-cost services for customers who meet or exceed that balance level. In determining whether the customer reaches the qualifying threshold, IRA and Keogh Plan balances, as well as all other types of deposit and loan balances, may be considered.

For example, a bank may offer free checking services, discounted safe deposit box rents, or free loan closing costs to customers with qualifying account balances, in any combination of accounts, of $20,000 or more.

3. The Applicants represent that the practice of relationship banking can be explained by both the revenue and the cost side of the banking business, and the fact that retail banking has become highly competitive as a result of banking deregulation. The major source of a bank's revenues is interest on loans. Banks derive the overwhelming proportion of their lendable funds from deposits and investment instruments. The Applicants state that by encouraging customers to place more funds with a particular bank, relationship banking increases the pool of funds which the bank may lend, thereby increasing its interest revenues. Cost savings arise because it is easier and cheaper for a bank to sell additional services to existing customers than it is to cultivate new customers. Moreover, there are economies of scale in serving larger customers which can be shared with such customers. For example, if a customer maintains three separate deposit accounts and two loan accounts with a bank, that bank can service that customer at far less expense than would be the case if the same five financial products were offered to five separate customers. These cost savings derive from such efficiencies as the ability to prepare a single consolidated monthly statement for multiple accounts and from the ability to use fewer separate credit reports. The Applicants state that banks pass on some of the economies of scale and cost savings that arise from providing services to customers with accumulated balances over a certain size because of the increased competition in the financial services business.

4. Relationship banking is advantageous to banks because the value of the benefits provided to qualifying customers (i.e. the value of the discounts or foregone fees) is more than offset by the revenues derived from the bank's increase in its pool of lendable funds and the bank's own cost savings associated with servicing customers with which the bank has an extensive, typically multi-product, relationship. The Applicants state that the value of the benefits provided to qualifying customers is not paid for by reducing investment rates of return, which are instead driven by market forces and the need to obtain funds in order to lend. Any reductions in rates paid on deposits would make the bank less attractive to customers, which would be contrary to the purpose of relationship banking. Therefore, the rationale for relationship banking is that the increase in interest earned on loans achieved by increasing the actual number of deposits will far outweigh a marginal reduction in income received from service fees, and that such foregone fees need not be recouped by reducing investment rates of return.

5. The Applicants state that banks are quite limited by the nature of their charters in the services they may offer to customers. Banks generally are prohibited by applicable federal and state law from engaging in activities that are not related to basic banking functions. The services offered by banks are subject to scrutiny under these standards by federal and state banking agencies and the courts. The Applicants state that although these standards are subject to continuing interpretation, they do establish significant limitations on the conduct of banks and assure that their business activities are consistent with the business of banking.

Discussion of the Proposal Exemption

1. Scope

The exemption proposed herein by the Department would provide relief from the sanctions of Code section 4975(c)(1)(D), (E) and (F) for the receipt of services at reduced or no cost by an individual

[6] Announcement 90-1, 1990-2 I.R.B. 31 (January 8, 1990).

[7] The IRA Nonenforcement Policy applies to cash or property described in the 1983 Proposal.

establishing or maintaining an IRA or Keogh Plan, or by members of his or her family, from a bank defined in Code section 408(n) pursuant to an arrangement in which IRA or Keogh Plan deposit balances are taken into account for purposes of determining eligibility to receive such services.[8]

The Applicants request prospective and retroactive relief for those arrangements in which reduced or no cost services are provided to bank customers whose IRA or Keogh Plan balances were included in determining the cost of such services. After considering the request, the Department has determined not to provide any retroactive relief in the proposed exemption. In this regard, the Department has consulted with the Service regarding application of the IRA Nonenforcement Policy described in Announcement 90–1. The Service has indicated that regardless of the Department's resolution of the class exemption request, the Service will continue to apply the IRA Nonenforcement Policy described in Announcement 90–1 to the transactions that take place prior to the Department's final determination. Therefore, the Department has concluded that retroactive relief for such transactions is unnecessary.

Lastly, the Department notes that where a transaction involves plans not subject to title I of the Act, the particular concern in considering relief is to assure that the transactions do not conflict with the basic purpose for which such plans are established and afforded special tax benefits, i.e. to provide retirement savings for participants and their beneficiaries.[9] In recognition of the Service's role with respect to the administration of the law regarding such tax-favored arrangements, the Department requested the Service's views regarding a conditional exemption for the provision of reduced or no cost services involving IRAs and Keogh Plans which are not subject to title I of the Act. The Service agrees that the relief contained in this proposed exemption does not appear to be inconsistent with the provisions of the Code encouraging the establishment of such plans to provide retirement income.

2. Proposed Conditions

The proposed exemption contains conditions, that are described below, which are viewed by the Department as necessary to ensure that the retirement income of IRA and Keogh Plan participants and beneficiaries is not jeopardized by relationship banking arrangements.

Under the proposed exemption, only those services that may be offered by banks under applicable federal and state banking law would be covered by the proposed exemption. In those cases where the service is offered by an affiliate of the bank, the service must be one that the bank itself could offer. Such services must be provided by the bank in the ordinary course of the bank's business to customers who do not qualify for reduced or no cost banking services. Thus, no relief would be provided for a service that was offered solely to customers who maintain IRAs or Keogh Plans with the bank.

In addition, the IRA or Keogh Plan, whose deposit balance is taken into account for purposes of determining eligibility to receive services at reduced or no cost, must be established and maintained for the exclusive benefit of the participant establishing the IRA or Keogh Plan, his or her spouse, or their beneficiaries.

The proposal also provides that for the purpose of determining eligibility to receive services at reduced or no cost, the deposit balance in the IRA or Keogh Plan must be treated in the same manner as account balances of the same dollar amount, other than those in IRAs or Keogh Plans, which are maintained by customers of the bank. Under this requirement, all banking balances would be fungible and counted in the same manner. This requirement will ensure the IRA or Keogh Plans will not get preferential or discriminatory treatment in determining eligibility for relationship banking services.

For example, if a bank establishes a $10,000 threshold for certain relationship banking services, any combination of balances (such as savings accounts, IRA or Keogh Plan accounts, checking accounts or loan balances) that equals $10,000 would be sufficient to satisfy the threshold requirement. In complying with this condition, the bank could not establish a $10,000 threshold for an IRA customer for eligibility for relationship banking services and a $20,000 threshold for other customers for such services.

In addition, IRA or Keogh Plan customers who become eligible for relationship banking services must be eligible to receive the same services that are provided to non-IRA or non-Keogh Plan customers with account balances of the same dollar amount. For example, a customer with total IRA deposit balances of $10,000 must be eligible for the same services as a customer with total non-IRA balances of $10,000. Conversely, a bank could not establish a $10,000 threshold for IRA and non-IRA customers, but provide additional reduced or no cost services only to IRA customers. Thus, no relief would be available under the exemption for a relationship banking program under which a bank offers free checking to both IRA and non-IRA customers with balances of $10,000 but offers safety deposit boxes only to the IRA customers.

The proposed exemption also requires that the rate of return on the IRA or Keogh Plan investment must be no less favorable than the rate of return on an identical investment that could have been made at the same time by a customer of the bank who is not eligible for (or who does not receive) reduced or no cost services. For example, if a bank offers a five year certificate of deposit earning 10%, the certificate of deposit offering the same rate of return must be available to customers who receive reduced or no cost services as well as those who do not receive such services. Thus, under the proposal, a bank could not offer an investment to an IRA or Keogh Plan of a customer who receives reduced or no cost services unless the IRA or Keogh Plan earns no less than that which could be earned on an identical investment available to customers at such bank without the reduced or no cost services.

Notice to Interested Persons

Because many participants in IRAs or Keogh Plans, and financial institutions

[8] The exemption requested by the Applicants would apply only to IRAs and Keogh Plans which are not "employee benefit plans" covered by title I of the Act. In this regard, 29 CFR 2510.3–2(d) explains that IRAs described in section 408(a) of the Code will not be considered pension plans subject to title I of the Act, provided that: (1) No contributions to the plan are made by the employer or employee association; (2) participation is completely voluntary for employees or members; (3) the sole involvement of the employer or employee organization is without endorsement to permit the sponsor to publicize the program, to collect contributions on behalf of the sponsor through payroll deductions or dues checkoffs and to remit them to the sponsor; and (4) the employer or employee organization receives no consideration in the form of cash or otherwise other than reasonable compensation for services actually rendered in connection with payroll deductions or dues checkoffs.

29 CFR 2510.3–3(b) explains that for purposes of title I of the Act, the term "employee benefit plan" shall not include a Keogh Plan under which no employees are covered under the plan. In this regard, 29 CFR 2510.3–3(c) states that for purposes of the above referenced section: (1) An individual and his or her spouse shall not be deemed to be employees with respect to a trade or business, whether incorporated or unincorporated, which is wholly owned by the individual or by the individual and his or her spouse; and (2) a partner in a partnership and his or her spouse shall not be deemed to be employees with respect to the partnership.

[9] See 48 FR 4592, *op. cit.*

sponsoring IRAs or Keogh Plans, could conceivably be considered interested persons, the only practical form of notice is publication in the Federal Register.

General Information

The attention of interested persons is directed to the following:

(1) Before this exemption may be granted under section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the IRAs and Keogh Plans and of their participants and beneficiaries and protective of the rights of participants and beneficiaries of such plans.

(2) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) If granted, the proposed class exemption will be applicable to a transaction only if the conditions specified in the class exemption are met.

Written Comments and Hearing Request

All interested persons are invited to submit written comments or requests for a public hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the referenced applications at the above address.

Proposed Exemption

On the basis of the facts and representations set fgorth in the applications and this document, the Department is considering granting the following exemption under the authority of section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75–1 [40 FR 18471, April 28, 1975]:

Section I: Covered Transactions

Effective (date of publication of final class exemption), the sanctions resulting from the application of section 4975 of the Code, including the loss of exemption of an IRA pursuant to section 408(e)(2)(A) of the Code, by reason of section 4975(c)(1) (D), (E) and (F) of the Code, shall not apply to the receipt of services at reduced or no cost by an individual establishing or maintaining an IRA or Keogh Plan, or by members of his or her family, from a bank pursuant to an arrangement in which the deposit balance in the IRA or Keogh Plan is taken into account for purposes of determining eligibility to receive such services, provided that each condition of Section II of this exemption is satisfied.

Section II: Conditions

(a) The IRA of Keogh Plan, the deposit balance of which is taken inato account for purposes of determining eligibility to receive services at reduced or no cost, is established and maintained for the exclusive benefit of the participant establishing the IRA or Keogh Plan, his or her spouse, or their beneficiaries.

(b) The services must be of the type that the bank itself could offer consistent with applicable federal and state banking law.

(c) The services are provided by the bank [or an affiliate of the bank] in the ordinary course of the bank's business to customers who do not qualify for reduced or no cost banking services.

(d) For the purpose of determining eligibility to receive services at reduced or no cost, the deposit balance in the IRA or Keogh Plan is treated in the same manner as account balances of the same dollar amount, other than those in IRAs or Keogh Plans, which are maintained by customers of the bank.

(e) The rate of return on the IRA or Keogh Plan investment is no less favorable than the rate of return on an identical investment that could have been made at the same time by a customer of the bank who is not eligible for (or who does not receive) reduced or no cost services.

Section III: Definitions

The following definitions apply to this exemption.

(a) The term bank means a bank described in section 408(n) of the Code.

(b) The term IRA means an individual retirement account described in Code section 408(a). For purposes of this exemption, the term IRA shall not include an IRA which is an employee benefit plan covered by title I of the Act.

(c) The term Keogh Plan means a pension, profit sharing, or stock bonus plan qualified under Code section 401(a) and exempt from taxation under Code section 501(a) under which some or all of the participants are employees described in section 401(c) of the Code. For purposes of this exemption, the term Keogh Plan shall not include a Keogh Plan which is an employee benefit plan covered by title I of the Act.

(d) The term deposit balance means a deposit as that term is defined under 29 CFR 2550.408b–4(c)(3).

(e) An affiliate of a bank includes any person directly or indirectly controlling, controlled by, or under common control with the bank. The term control means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(f) The term members of his or her family refers to individuals who would be a member of the family as that term is defined in Code section 4975(e)(6), or a brother, a sister, or spouse of a brother or a sister.

Signed at Washington, DC., this 22nd day of February, 1991.

Alan D. Lebwotiz,

Deputy Assistant Secretary for Program Operations Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 91–4788 Filed 2–27–91; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–4064]

Proposed Class Exemption for Certain Transactions Involving Persons Establishing Individual Retirement Accounts or Retirement Plans for Self-Employed Individuals

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Solicitation of comments.

SUMMARY: This document requests comments from interested persons regarding the Department of Labor's disposition of a proposed class exemption from certain prohibited transaction restrictions of the Internal Revenue Code of 1986 (the Code). The proposed class exemption would exempt the receipt of certain premiums, gifts or other consideration paid to an individual in connection with a transaction involving an Individual Retirement Account (IRA) or retirement plan for a self-employed individual (Keogh Plan) provided certain conditions are met. The Department believes that additional information provided by interested persons will help it to determine whether exemptive relief for such transactions is needed, and if so, upon what standards and safeguards relief should be conditioned.

DATES: Comments should be submitted on or before April 15, 1991.

ADDRESSES: Comments (preferably, at least three copies) should be addressed to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, room N–5649,

U.S. Department of Labor, Washington, DC 20210. Attention: Application No. D–4064. All comments received will be available for public inspection at the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Allison Padams, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 523–7901 (this is not a toll-free number); or Susan Rees, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, (202) 523–9141 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On February 1, 1983 the Department of Labor (the Department) and the Internal Revenue Service published a notice of proposed class exemption (48 FR 4592) from the sanctions resulting from the application of section 4975 the Code, including the loss of exemption of an IRA pursuant to section 408(e)(2)(A) of the Code, by reason of section 4975(c)(1) of the Code.[1] The transactions involve the payment of premiums and gifts to individuals in connection with the establishment or contribution to an IRA or Keogh Plan by organizations authorized to sponsor IRA or Keogh Plans. The exemption was proposed pursuant to section 4975(c)(2) of the Code and in accordance with the procedures set forth in Revenue Procedure 75–26 (1975–1 C.B. 722) and ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). The Department and Service received a number of public comments with regard to the proposed class exemption. In addition, a public hearing was held on August 17, 1983.

DISCUSSION: In 1983, the Department and the Service jointly proposed a class exemption on their own motion in recognition of the apparent prevalence of this type of transaction.[2] To date, the Department has not granted relief for the transactions described in that proposal. It has come to the attention of the Department that many financial institutions may no longer offer premiums as incentives for their customers to establish IRAs or Keogh Plans with their particular institution. Rather, it appears that financial institutions now offer banking services at reduced or no cost as an inducement to customers to begin or expand banking relationships.[3] Inasmuch as the practice of offering premiums no longer appears to be prevalent among financial institutions, the Department contemplates withdrawing the proposal.

Accordingly, this notice is being published in order to provide interested persons with an opportunity to submit written comments which will be considered by the Department in deciding whether to provide exemptive relief for the receipt of premiums, gifts or other consideration by an individual in connection with the establishment of, or contribution to, an IRA or Keogh plan. Specifically, the Department requests that interested persons provide current information on the extent of the need for exemptive relief for transactions of this type and the standards and safeguards upon which exemptive relief should be conditioned.

Written Comments

All interested persons are invited to submit written comments on the subject matter of this notice to the address and within the time period set forth above. All comments will be made a part of the record of this proceeding and will be available for public inspection.

Signed at Washington, DC, this 22nd day of February, 1991.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 91–4789 Filed 2–27–91; 8:45 am]

BILLING CODE 4510–29–M

[1] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

[2] The proposed exemption provides that the sanctions resulting from the application of section 4975 of the Code, including the loss of exemption of an IRA pursuant to section 408(e)(2)(A) of the Code, by reason of section 4975(c)(1) of the Code, shall not apply to the payment of cash, property, or other consideration by an organization authorized to sponsor IRAs or Keogh Plans, to an individual establishing or contributing to an IRA or Keogh Plan or to members of his or her family as defined by section 4975(e)(6) of the Code, provided that

(a) The IRA or Keogh Plan in connection with which cash property or other consideration is given, is established solely to benefit the participant, his or her spouse and their beneficiaries; and

(b) The fair market value to the financial institutions of the property or other consideration or the cash received, is not more than $10 for deposits to the IRA or Keogh Plan for less than $5,000 and $20 for deposits to the IRA or Keogh Plan of $5,000 or more.

[3] By notice appearing elsewhere in this issue of the Federal Register, the Department has proposed a conditional class exemption to permit the receipt of certain services at reduced or no cost by an individual establishing or maintaining an IRA or a Keogh Plan from a bank. Interested persons also are referred to the American Bankers Association's and the Consumer Bankers Association's applications for exemption (Application Nos. D–8243 and D–8323) on file with the Department for further details.

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Meeting

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770) notice is hereby given of a public meeting to be held in Ballroom B, located on the Ballroom Level of the Washington Vista International, Washington, DC.

DATES: Monday, March 25, 1991, 8:30 a.m.–12 p.m.; Tuesday, March 26, 1991, 8:30 a.m.–12 p.m.

STATUS: The meeting is to be open to the public.

MATTERS TO BE DISCUSSED: The purpose of this public meeting is to enable the Commission members to discuss progress on the research agenda, findings received from prior hearings, and budget and administrative matters.

FOR FURTHER INFORMATION CONTACT: Barbara C. McQuown, Director, National Commission for Employment Policy, 1522 K Streeet, NW., Suite 300, Washington, DC 20005; (202) 724–1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy was established pursuant to Title IV–F of the Job Training Partnership Act (Pub. L. 97–300). The Act charges the Commission with the broad responsibility of advising the President, and the Congress on national employment issues. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made. Minutes of the meeting will be available for public inspection at the Commission's headquarters, 1522 K Street, NW., Suite 300, Washington, DC 20005.

Signed at Washington, DC, this 21st day of February.

Barbara C. McQuown,

Director, National Commission for Employment Policy.

[FR Doc. 91–4668 Filed 2–27–91; 8:45 am]

BILLING CODE 4510–23–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Dance Advisory Panel; Amended Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Dance Heritage Initiative Section) to the National

Council on the Arts will be held on March 18, 1991 from 9:30 a.m.–5 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 4 p.m.–5 p.m. The topic will be policy discussion.

The remaining portion of this meeting from 9:30 a.m.–4 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of December 11, 1990, as amended, this session will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accomodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) seven days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated; February 20, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–4725 Filed 2–27–91; 8:45 am]

BILLING CODE 7537–01–M

Dance Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Dance/Film/Video Section) to the National Council on the Arts will be held on March 19–20, 1991 from 9 a.m.–6 p.m. and March 21 from 9 a.m.–4 p.m. in room 716 at the Nancy Hanks Center, 100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on March 21 from 1 p.m.–4 p.m. The topic will be policy discussion.

The remaining portions of this meeting on March 19–20 from 9 a.m.–6 p.m. and March 21 from 9 a.m.–1 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of December 11, 1990, as amended, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: February 20, 1991

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–4726 Filed 2–27–91; 8:45 am]

BILLING CODE 7537–01–M

Media Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Television Programming in the Arts Section) to the National Council on the Arts will be held on March 20, 1991 from 9:15 a.m.–6:30 p.m. and March 21 from 9 a.m.–5:30 p.m. in Room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on March 20 from 9:15 a.m.–9:45 a.m. and March 21 from 4 p.m.–5:30 p.m. The topics will be introductory remarks and policy discussion.

The remaining portions of this meeting on March 20 from 9:45 a.m.–6:30 p.m. and March 21 from 9 a.m.–4 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of December 11, 1990, as amended, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts,

Washington, DC 20506, or call (202) 682–5433.

Dated: February 20, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–4727 Filed 2–27–91; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Division of Polar Programs; Meeting

The National Science Foundation announces the following meeting:

Name: Antartic Pollution Control Task Group.

Date and time: March 11, 1991; 10 a.m. to 5 p.m.

Place: National Science Foundation, 1800 G St., NW, Washington, DC 20550 room 536.

Type of meeting: Open.

Contact person: Lawrence Rudolph, Deputy General Counsel, Office of the General Counsel, room 501, National Science Foundation, Washington, DC 20550 (202) 357–9435.

Purpose of meeting: The Committee will advise the Foundation on the designation of pollutants and their disposal or discharge from any source within the Antarctica.

Agenda:

* 10 a.m. to 12 p.m.—Review of materials.
* 2 p.m. to 5 p.m.—Discussion.

Summary of agenda: Discharge standards and regulatory and policy considerations will be among the topics discussed.

Reason for late notice: Because of the short-term nature of this group and the availability of participants, it is necessary to meet as schedules permit.

Dated: February 22, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–4662 Filed 2–27–91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–254 and 50–265]

Commonwealth Edison Co. Quad Cities Nuclear Power Station, Units 1 and 2; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from the requirements of 10 CFR part 50, appendix R, to Commonwealth Edison Company (CECo, the licensee), for operation of the Quad Cities Nuclear Power Station, Units 1 and 2, located in Rock Island County, Illinois.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant several specific plant exemptions from certain requirements of "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979" prescribed in Appendix R to 10 CFR Part 50. These requirements are: (1) That the plant be able to achieve hot shutdown without performing repairs; (2) that cable and equipment and associated non-safety circuits of redundant trains be separated by a horizontal distance of more than 20 feet (section III.G.2.b of appendix R); and (3) that emergency lighting with an 8-hour battery power supply be provided in areas needed for safe shutdown (section III.J).

The proposed action is in accordance with the licensee's request for exemptions dated September 30, 1987, October 1, 1987, November 23, 1987, and April 11, 1990.

In addition, the proposed action would change the combustible load limits in the Exemption that was granted on August 18, 1989.

The Need for the Proposed Action

Since it is not possible to predict all conditions or plant configurations under which a fire can occur and propagate, the Appendix R rule only prescribes general fire protective measures. As such, there will be instances where plant specific configurations or system features could safely allow for different protection from fire damage than specified in the rule.

For these situations, strict compliance may not be required to meet the underlying purpose of the rule. Whereupon, for special circumstances identified in § 50.12, the licensee can be permitted to forego unnecessary plant modifications. For the particular instances in this proposed action, the licensee has demonstrated, by detailed fire hazards analysis, that existing protection and/or other proposed modifications provide a level of safety for certain plant areas and zones which is equivalent to the technical requirements in appendix R.

Environmental Impact of the Proposed Action

The proposed exemptions are intended to provide a level of safety equivalent to the technical requirements of appendix R. These exemptions will not change the types, or allow an increase in the amounts, of effluents that may be released offsite. Nor would they result in an increase in individual or cumulative occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemptions.

With regard to potential nonradiological impacts, the proposed exemptions involve features located entirely within the restricted areas as defined in 10 CFR 20. They do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemptions.

Alternative to the Proposed Action

Since the Commission has concluded there are no measurable environmental impacts associated with the proposed exemptions, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemptions would be to require rigid compliance with the requirements of appendix R of 10 CFR 50. Such action would not enhance the protection of the environment and would result in unwarranted licensee expenditures of engineering and construction resources, as well as associated capital costs.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement (construction permit and operating license) for Quad Cities Nuclear Power Station, Units 1 and 2, dated September 1972.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed actions will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's letters dated September 30, 1987, October 1, 1987, November 23, 1987 and April 11, 1990. These letters are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Dated at Rockville, Maryland, this 21st day of February, 1991.

For the Nuclear Regulatory Commission.

Richard J. Barrett,

Director, Project Directorate III–2 Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91–4770 Filed 2–27–91; 8:45 am]

BILLING CODE 7590–01–M

Application for License to Export Nuclear Material

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application," please take notice that the Nuclear Regulatory Commission has received the following application for an export license. A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the application for a license to export special nuclear materials noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the material to be exported. The information concerning this application follows.

NRC EXPORT LICENSE APPLICATION

Name of applicant, date of appl., date received, application number	Material type	Material in kilograms		End use	Country of destination
		Total element	Total isotope		
Nissho Iwai Corp., 02/08/91, 02/14/91, XSNM02467, Amendment 02.	45.90% Enriched Uranium...	68.45	30.80	Fuel for JMTR Research Reactor.	Japan.

Dated this 21st day of February 1991 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Ronald D. Hauber,

Assistant Director, for Exports, Security, and Safety Cooperation, International Programs, Office of Governmental and Public Affairs.

[FR Doc. 91–4643 Filed 2–27–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–237]

Commonwealth Edison Co; Issuance of Facility Operating License No. DPR–19

The U.S. Nuclear Regulatory Commission (the Commission) has issued Facility Operating License No. DPR–19 to Commonwealth Edison Company, authorizing operation of the Dresden Nuclear Power Station, Unit 2 (Dresden Unit 2) at steady-state reactor core power levels not in excess of 2527 megawatts (thermal), in accordance with the provisions of the license and the Technical Specifications.

Dresden Unit 2 is a boiling water reactor located in Grundy County, Illinois. The Dresden Unit 2 reactor has operated since December 22, 1969, under Provisional Operating License No. DRP–19. Facility Operating License No. DPR–19 supersedes Provisional Operating License No. DPR–19 in its entirety.

Notice of Consideration of Conversion of Provisional Operating License to Full-Term Operating License and Opportunity for Hearing was published in the **Federal Register** on August 17, 1973 (38 FR 22247). The full-term operating license was not issued previously pending completion of the reviews under the Systematic Evaluation Program (NUREG–0823, February 1983, and Supplement 1, October 1989), and by the Advisory Committee on Reactor Safeguards. The final Environmental Statement (FES) connected with the conversion to a full-term operating license was issued in November 1973. A Notice of Availability of the FES was published in the **Federal Register** on November 13, 1973 (38 FR 31329). Because the FES was issued a number of years ago, the staff performed an environmental assessment to determine if an FES supplement was necessary. This assessment, dated June 7, 1990, concluded that an FES supplement was not necessary. This conclusion was noticed in the **Federal Register** on June 19, 1990 (55 FR 24947).

The application for the full-term operating license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations in 10 CFR Chapter I, as set forth in the license.

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement, since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

Facility Operating License No. DPR–19 is effective of of its date of issuance and shall expire January 10, 2006.

For further information concerning this action see: (1) The licensee's application for a full-term operating license dated November 15, 1972, as substantially supplemented March 16, 1973, (2) the Final Environmental Statement (November 1973), (3) the Commission's Environmental Assessment dated June 7, 1990, (4) Facility Operating License No. DPR–19, and (5) the Safety Evaluation Report (NUREG–1403) dated October 1990, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

A copy of Facility Operating License No. DPR–19 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III/IV/V. Copies of the Safety Evaluation Report (NUREG–1403) may be purchased through the U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5585 Port Royal Road, Room 303, Springfield, Virginia 22161. A copy is available for inspection and/or copying for a fee in the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 20th day of February, 1991.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director, Division of Reactor Projects III/IV/V Office of Nuclear Reactor Regulation.

[FR Doc. 91–4771 Filed 2–27–91; 8:45 am]

BILLING CODE 7590–01

[Docket No. 50–219]

GPU Nuclear Corp.; Issuance of Amendment to Provisional Operating License.

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 148 to Provisional Operating License No. DPR–16 issued to GPU Nuclear Corporation (the licensee), which revised the Technical Specifications for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey. The amendment is effective as of the date of issuance.

The amendment modified in Technical Specifications to allow draining of the 15,000 gallon emergency diesel generator (EDG) fuel oil storage tank for the purpose of internal inspection during periods of cold shutdown or refueling. The revision would allow temporary connection of fuel oil tanker trucks to the EDG fuel oil fill station. This arrangement would bypass the fuel oil storage tank and supply fuel to the EDGs directly.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on December 27, 1990 (55 FR 53222). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated December 7, 1990, (2) Amendment No. 148 to License No. DPR–16, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the local document room, Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—I/II.

Dated at Rockville, Maryland this 21st day of February 1991.

For the Nuclear Regulatory Commission.

Alexander W. Dromerick,

Sr. Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–4772 Filed 2–27–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket NO. 50–443]

Public Service Co. of New Hampshire; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing for Transfer of Ownership Interest and Opportunity for Public Comment on Antitrust Issues

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–86, issued to the Public Service Company of New Hampshire (the licensee), for operation of the Seabrook Station located in Rockingham County, New Hampshire.

The licensee submitted a request for an amendment by letter, dated November 13, 1990 as supplemented on January 14, 1991.

The proposed amendment would authorize a newly created entity, North Atlantic Energy Corporation (NAEC), to be included as a licensee and to acquire and possess Public Service Company of New Hampshire's (PSNH) ownership interest in Seabrook Station, Unit 1 (Seabrook).

As described in the application, the transfer from PSNH to NAEC is a part of the reorganization plan ordered by the Bankruptcy Court as a resolution to the pending PSNH bankruptcy proceedings. The reorganization plan invloves the acquisition of PSNH by Northeast Utilities (NU) and, through a merger action, the formation of NAEC and Reorganized PSNH as two wholly owned subsidiaries of NU. NAEC will acquire PSNH's 35.56942% ownership share of Seabrook, and Reorganized PSNH will acquire the other assets of PSNH. After the merger, NAEC will enter into a life-of-the-unit power contract for the sale of all of its share of the capacity and energy from Seabrook to Reorganized PSNH.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application and determined that the proposed changes do not involve significant hazards considerations. In regard to the three standards, the licensee provided the following analysis.

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

As a result of the proposed license amendment, there will be no physical change to the Seabrook facility, and all Limiting Conditions for Operation, Limiting Safety System Settings and Safety Limits specified in the Technical Specifications will remain unchanged. Also, the Seabrook Quality Assurance Program, and the Seabrook Emergency Plan, Secretary Plan, and Operator Training and Requalification Program will be unaffected.

(2) The proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment will have no effect on the physical configuration of Seabrook or the manner in which it will operate. The Seabrook plant design and design basis will remain the same. The current plant safety analyses will therefore remain complete and accurate in addressing the design basis events and in analyzing plant response and consequences.

The Limiting Conditions for Operation, Limiting Safety System Settings and Safety Limits specified in the Technical Specifications for Seabrook are not affected

by the proposed license amendment. As such, the plant conditions for which the design basis accident analyses have been performed will remain valid. Therefore, the proposed license amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Use of the modified specification would not involve a significant reduction in a margin of safety.

Plant safety margins are established through Limiting Conditions for Operation, Limiting Safety System Settings and Safety Limits specified in the Technical Specifications. Since there will be no change to the physical design or operation of the plant, there will be no change to any of these margins. Thus, the proposed license amendment will not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration detemination analysis. Based upon its review, the staff agrees with the licensee's analysis.

Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final detemination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 1, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Procedings" in 10 CFR part 2. Interested persons should consult a current copy of CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C. 20555 and at the Local Public Document Room located at the Exeter Public Library, 47 Front Street, Exeter, New Hampshire, 03833. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final detemination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final detemination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard Wessman: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John A. Ritscher, Esq., Ropes and Gray, One International Place, Boston, MA 02110, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Antitrust Issues

Pursuant to 10 CFR 2.101 and 50.80 of the Commission's Regulations, the staff is publishing receipt of PHNH's request to transfer the stated ownership interest in Seabrook from PSNH to NAEC.

Any person who wishes to express views relating to any antitrust issues believed to be raised by this transfer request should submit said views within 30 days of the initial publication of this Notice in the **Federal Register** to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation. The Director of the Office of Nuclear Reactor Regulation will issue a finding whether significant changes in the licensees' activities or proposed activities have occurred since the completion of the previous antitrust review.

Although the staff is providing the opportunity for comments pursuant to the competitive aspects of the proposed transfer, the staff would like to note that it is aware of and is closely following the proceeding at the Federal Energy Regulatory Commission (FERC) that, among other concerns, is addressing competitive aspects of the proposed acquisition of PSNH by NU. The NRC will consider the FERC proceeding to the maximum extent possible in resolving issues brought before the NRC.

For further details with respect to this action, see the application for amendment dated November 13, 1990 as supplemented on January 14, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, located at Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Dated at Rockville, Maryland, this 21st day of February, 1991.

For the Nuclear Regulatory Commission.

Gordon Edison,

Senior Project Manager, Project Directorate I–3, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–4563 Filed 2–27–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–327–OLA and 50–328–OLA (Technical Specification Changes); ASLBP No. 91–635–07–OLA]

Tennessee Valley Authority; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Tennessee Valley Authority

Sequoyah Nuclear Plant, Units 1 and 2 Facility Operating License Nos. DPR–77 and DPR–79.

This Board is being established pursuant to a notice published by the Commission on January 23, 1991 in the **Federal Register** (56 FR 2546, 2556) entitled, "Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination And Opportunity for Hearing." The proposed amendments would modify section 6.0, Administrative Controls, of the Sequoyah Nuclear Plant (SQN), Units 1 and 2, Technical Specifications (TSs). The proposed changes would (1) incorporate the overall limit requirements that were provided in Generic Letter (GL) 82–16, "NUREG–0737 Technical Specifications," (2) delate the requirement for reporting Offsite Dose Calculation Manual changes and radiological waste treatment system changes in the monthly report, (3) change certain position titles, (4) change Plant Operations Review Committee (PORC) membership, (5) specify Plant Manager or Duty Plant Manager to approve administrative procedures and proposed plant modifications that affect plant nuclear safety, (6) revise the review and approval of proposed modifications, and (7) correct typographical errors.

The Board is comprised of the following administrative judges:

Peter B. Bloch, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

James H. Carpenter, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

All correspondence, documents and other materials shall be filed with the Board in accordance with 10 CFR 2.701 (1980).

Issued at Bethesda, Maryland, this 22nd day of February 1991.

[FR Doc. 91–4760 Filed 2–27–91; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–28907; File No. SR–CBOE–91–06]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Summary Fines for Failure to Perform Certain Reporting Duties

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 13, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II

and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend CBOE Rule 6.51A to provide more stringent summary fine procedures for Market Makers and Floor Brokers who fail to perform certain transaction reporting duties. Specifically, the Exchange proposes to amend CBOE Rule 6.51A(b)(2), which imposes fines on Market Makers and Floor Brokers who fail to report, or who report inaccurately, the transaction time for specified percentages of their trades during a given month. In particular, for Market Makers and Floor Brokers who execute at least five transactions on each of at least ten different trading days during an applicable month, CBOE Rule 6.51A(b)(2) currently imposes the following schedule of fines: (1) $100 for Market Makers and Floor Brokers with inaccurate or omitted reports of 30% to less than 40% of their transactions; (2) $250 for Market Makers and Floor Brokers with inaccurate or omitted reports of 40% to less than 50% of their transactions; and (3) $500 for Market Makers and Floor Brokers with inaccurate or omitted reports of 50% or more of their transactions. The proposal decreases the percentage of inaccurate or omitted transactions necessary to fall with each of the three fine categories, so that, for each month after March 1, 1991, until June 1, 1991: (1) Market Makers and Floor Brokers with inaccurate or omitted reports of 25% to less than 35% of their transactions will be fined $100; (2) Market Makers and Floor Brokers with inaccurate or omitted reports of 35% to less than 45% of their transactions will be fined $250; and (3) Market Makers and Floor Brokers with inaccurate or omitted reports of 45% or more of their transactions will be fined $500. After June 1, 1991, the percentages are decreased further, so that: (1) Market Makers and Floor Brokers with inaccurate or omitted reports of 20% to less than 30% of their transactions will be fined $100; (2) Market Makers and Floor Brokers with inaccurate or omitted reports of 30% to less than 40% of their transactions will be fined $250; and (3) Market Makers and Floor Brokers with inaccurate or omitted reports of 40% or more of their transactions will be fined $500.

The Exchange also proposes to amend Exchange Rule 6.51A(c). Currently, CBOE Rule 6.51A(c) imposes a $1,000 fine on certain Market Makers and Floor Brokers who fail to submit required information to the Standard & Poors 100 Index option ("OEX") price reporter for at least 50% of their OEX sale transactions during a given month. The CBOE proposes to provide additional fines under CBOE Rule 6.51A(c) and to extend the Rule's reporting requirement to include all options sale transactions. Specifically, for Market Makers and Floor Brokers who execute at least 25 sale transactions during an applicable month, CBOE Rule 6.51A(c), as amended, will impose the following fines for applicable months prior to June 1, 1991: (1) $500 for Market Makers and Floor Brokers who fail to report 40% to less than 50% of their sale transactions; and (2) $1,000 for Market Makers and Floor Brokers who fail to report 50% or more of their sale transactions. For applicable months after June 1, 1991, the Rule will include an additional fine level in the amount of $300 for Market Makers and Floor Brokers who fail to report 30% to less than 40% of their sale transactions.

In addition, the Exchange proposes to extend CBOE Rule 6.51A(j)'s suspension of reporting requirements under unusual circumstances to include all sale transactions, rather than only OEX sale transactions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regualtory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The CBOE proposes to amend CBOE Rule 6.51A in order to provide more stringent summary fine procedures for Market Makers and Floor Brokers who fail to perform certain transaction reporting duties required under Exchange Rule 6.51. The proposal is intended to encourage accurate price and transaction time reporting, which will help the Exchange refine the accuracy and completeness of its audit trail.

The text of the proposed rule change is available at the offices of the CBOE and the Commission.

The CBOE believes that the proposed rule change is consistent with the requirements of the Act and, specifically, with section 6(b)(5), in that it is designed to prevent fradulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. In addition, the CBOE believes that the proposal is consistent with section 6(b)(6), in that it provides for the appropriate discipline of Exchange members, and with section 6(b)(7), in that the proposal provides a fair procedure for the disciplining of Exchange members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approved such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 21, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 21, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-4655 Filed 2-27-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28899; File No. 10-100]

Self-Regulatory Organizations; Wunsch Auction Systems, Inc.; Order Granting Limited Volume Exemption from Registration as an Exchange Under Section 5 of the Securities Exchange Act

Dated: February 20, 1991.

I. Summary

Wunsch Auction Systems Inc. ("WASI") owns and proposes to operate a computerized, "single-price" auction system ("Wunsch System") designed to facilitate secondary market trading of certain equity and fixed income securities. By letter, dated October 3, 1990, WASI filed with the commission, pursuant to section 5 of the Securities Exchange Act of 1934 ("Act"), an application for exemption for both WASI and the Wunsch System from registration as a national securities exchange under section 6 of the Act by reason of the fact that WASI anticipates that the Wunsch System will account for limited volume in trading of securities.[1] On October 30, 1990, the Commission solicited comment on WASI's application for exemption.[2] In response to the request for comments, the Commission received 30 letters: 25 in favor of Wunsch's application and five opposed.[3]

Based on its conclusion that WASI will have such limited volume of transactions effected on its exchange, that it is not practicable and not necessary or appropriate in the public interest or for the protection of investors for WASI to register under section 6 of the Act, the Commission hereby grants WASI's application for exemption from registration as a national securities exchange.[4]

II. The System

The Wunsch System,[5] through electronic facilities owned and operated by WASI, will permit institutional and broker-dealer participants [6] to enter buy and sell orders for particular securities selected by WASI and offered through an auction format. As proposed, the System would provide for the trading of United States corporate equity and debt securities and Treasury bonds, notes and bills. By bringing those buy and sell orders together at one point in time, the System will arrive at a single, "equilibrium" price at which the securities offered in the auction will be sold.[7] By means of linkages from the customers' terminals to the main computer,[8] customers will enter limit orders through their terminals until a previously established cutoff time; once logged into the System, the customers will be able to view the order books for the auction of any security and place orders in such auctions. Bids and offers, their prices and volumes, separately and in the aggregate, are displayed. The current equilibrium price based upon orders in the system also is displayed. Prior to the auction cutoff time, customers may at any time replace or cancel orders by referencing a screen montage showing continuously updated indications of the auction price and volume based on current orders in the system.[9]

Immediately after each auction cutoff time, the System will commence a review of orders entered to determine the price at which the largest volume could be traded, which is also the price at which the volume of buying interest is most nearly equal to the volume of selling interest. That price will be the "auction price." The customers that entered bids above, and offers below, the auction price will be entitled to executions at the auction price. Limit orders equal to the auction price will be filled on the basis of time priority to the extent that counterparties are available. To consummate auction trades and to provide each customer with a known counterparty with credit standing, a broker-dealer [10] will, at its option, either

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[1] *See* Form 1, Amended Application for Registration or Exemption from Registration as a National Securities Exchange, dated October 5, 1990. See also letter from Kristen N. Geyer, Cadwalader, Wickersham & Taft, counsel for WASI, to Jonathan G. Katz, Secretary, dated October 3, 1990, both contained in Public File No. 10-100.

[2] See Securities Exchange Act Release No. 28577 (Otober 24, 1990), 55 FR 45705.

[3] For a discussion of the comments received, see notes 12-35 and accompanying text.

[4] Wunsch has also requested that the Division of Market Regulation take non-action positions with respect to: (1) The non-registration of WASI and the Wunsch System as a broker-dealer under section 15(a) of the Act; (2) the non-registration of a brokerage subsidiary of Bankers Trust New York Corporation, BT Brokerage, as a national securities exchange under the section 6 of the Act; and (3) the non-registration of WASI, the Wunsch System, and BT Brokerage as a securities information processor, transfer agent, and clearing agency under sections 11A and 17A of the Act, respectively. Letter from Daniel T. Brooks, Cadwalader, Wickersham & Taft, counsel for WASI, to John M. Ramsey, Attorney, Division of Market Regulation, SEC, dated August 20, 1990.

[5] The description of the Wunsch System is based upon the material representations made by WASI in its application requesting the exemption, *see supra* note 1.

[6] The System's institutional customers would include both so called "buy-side" firms, such as private and public pension funds, endowments, foundations, money managers, bank trust departments and insurance companies, and so-called "sell-side" firms, such as broker-dealers, including "upstairs" members of exchanges and exchange specialists.

[7] WASI contemplates that, initially, the auctions will take place three times a week, outside the trading hours of the New York Stock Exchange ("NYSE"). Each auction will last approximately one-half hour.

[8] Customers' terminals will be linked to the main computer by direct lines, modems, or public data networks, at the discretion of the customer. The main computer, located in WASI's data center in Minneapolis, Minnesota, operates on an uninterruptable power supply and is serviced by the manufacturer under a contract to repair any failure on the day in which it occurs. WASI has adopted a system of passwords (one password for logging in, another for order entry), a proprietary communications protocol, data encryption, error detection and other security measures designed to protect the System against unauthorized entry. The Wunsch System has sufficient capacity to handle a large number of transactions within a short period of time. For example, the Wunsch System theoretically could handle simultaneously up to 5,000 separate securities, and process up to 500 orders per second.

[9] In order to discourage the cancellation of orders, WASI proposes to charge customers two commissions, on both the buy and sell side, for each cancelled order. Customers may replace orders with more aggressive orders (*i.e.*, higher bids or lower offers) without penalty, but will be penalized for replacing an order with a less aggressive one (*i.e.*, a lower bid or higher offer).

[10] A broker-dealer subsidiary of Bankers Trust New York Corporation, BT Brokerage, will perform this function. WASI will not assume positions or handle customer funds.

execute all orders as agent obligated to complete the trade or purchase from each "in the money" offeror and sell to each "in the money" bidder the requisite amount of securities at the auction price.[11] A bank subsidiary of Bankers Trust ("bank subsidiary") will clear and settle, and facilitate the comparison of, trades executed in the Wunsch System through an account established by the bank subsidiary at the Depository Trust Company ("DTC"), a clearing agency registered with the Commission under section 17A of the Act.

III. Comments

In light of the novelty of determining whether the Commission should grant WASI a limited volume exemption from registration as a national securities exchange under section 5 of the Act, the Commission requested comment on whether: (1) The Commission should grant WASI the exemption it seeks; and (2) if so, the conditions that should apply to such exemption.[12]

In response to the solicitation of public comment on WASI's application, the Commission received 30 letters: 25 in favor of WASI's application [13] and five opposed.[14]

In general, commentators in favor of WASI's application cited to the ability of the System to reduce trading costs while providing an even playing field among investors. Some institutional investors anticipated that the System would complement their traditional trading methods by providing an alternative market for transactions not requiring immediacy.[15]

Commentators also liked the direct and equal access to the System. TSA wrote that "the structure of the system with direct access by investors and open book price discovery serves to protect investors from the potential abuses inherent in traditional exchanges."[16]

One commentator argued that due to the limited trading time on the System there would be relatively low volume on the exchange.[17] As the planned initial operating schedule is three transactions in each security per week, the sponsor of the System also explained that he anticipates volume on the exchange to be low.[18]

Five commentators, the Amex, NASD, NYSE, PHLX, and PSE opposed WASI's application. In general, they urged the Commission to deny WASI an exemption from registration as a national securities exchange, or to defer final action on the WASI application until more precise standards for exemption from registration, such as those in proposed rule 15c2–10, are adopted by the Commission.[19]

The NYSE argued that the Commission did not have the statutory authority to grant the exemption because Congress intended section 5's exemptive language to be a one-time, transitional provision applicable to the exchanges that existed in 1934. Instead of allowing for "start-up" exchange, the NYSE argued, Congress intended that section 5 take into account those exchanges that already existed in 1934 which had little trading volume due to the effects of the Great Depression and the regional interest of their listings. In any event, the NYSE argued, the Commission cannot reasonably find limited volume except with reference to an exchange that has an operating history; since the Wunsch System has no such history, the NYSE argued that the Commission cannot reasonably grant the exemption.[20]

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[11] In a procedure that WASI believes constitutes compliance with the off-board trading rule adopted by the NYSE (*i.e.*, rule 390), BT Brokerage may route orders in NYSE listed securities executed by BT Brokerage in New York City to one or more overseas affiliates of that broker-dealer for time-stamping in the appropriate overseas market (*e.g.*, the International Stock Exchange in London or the Singapore Stock Exchange).

[12] Although section 5 does not require publication of such a request for exemption, this is the first such request in 54 years; accordingly the Commission determined, in its discretion, to publish notice in order to solicit the views of interested persons on this application. The Commission has granted section 5 exemptions on other than a temporary basis to seven exchanges. The applications of those exempted exchanges were made available to the public.

[13] See letters from: Charles N. Dawkins, CFA, Senior Vice President, Aetna Life Insurance and Annuity Company ("Aetna"), to Jonathan Katz, Secretary, Commission, (hereinafter "Secretary"), dated November 6, 1990; Theodore R. Aronson, Aronson + Fogler ("Aronson"), to Secretary, dated November 12, 1990; Peter W. Lert, Investment Analyst, Batterymarch Financial Management ("Batterymarch"), to Secretary, dated November 6, 1990; Jeffrey A. Geller, Managing Director, BEA Associates, Inc. ("BEA"), to Secretary, dated November 1, 1990; Robert G. Wade, Jr., President and Chairman of the Board, Chancellor Capital Management, Inc. ("Chancellor"), to Secretary, dated November 28, 1990; Bruce N. Lehmann, Associate Professor of Economics and Finance, Columbia University ("Columbia"), to Secretary, dated November 18, 1990; John L. Dorian, First Quadrant ("First"), to Secretary, dated November 15, 1990; Michael Fellers, Vice President, Investment Research Company ("Investment"), to Secretary, dated November 7, 1990; John W. O'Brien, Chairman and Chief Executive Officer, Leland O'Brien Rubinstein Associates, Inc. ("Leland"), to Secretary, dated November 28, 1990; Arnold S. Wood, President, Martingale Asset Management ("Martingale"), to Secretary, dated November 16, 1990; Thomas B. Hazuka, Executive Vice President, Mellon Capital Management Corporation ("Mellon"), to Secretary, dated November 26, 1990; Brad Pope, Assistant Vice President, NCNB Texas ("NCNB") to Secretary, dated January 8, 1991; Preston Estep, New Amsterdam Partners L.P. ("New Amsterdam"), to Secretary, dated November 2, 1990; Robert A. Schwartz, Professor of Economics and Finance, New York University, Leonard N. Stern School of Business ("Stern"), to Secretary, dated November 12, 1990; Wayne H. Wagner, Partner, Plexus Group ("Plexus") to Secretary, dated February 7, 1991; Ralph S. Tate, Vice President and Director, Standish, Ayer & Wood, Inc. ("Standish"), to Secretary, dated December 15, 1990; Robert E. Shultz, Managing Director, Trust Company of the West ("Trust Company"), to Secretary, dated November 16, 1990; T. Scott Wittman, Senior Vice President, TSA Capital Management ("TSA"), to Secretary, dated November 8, 1990; Shawn LaMaster, Manager, Economic Science Systems Development, Economic Science Laboratory, University of Arizona ("Arizona/LaMaster"), to Secretary, dated November 26, 1990; Vernon L. Smith, Research Director and Regents' Professor of Economics, University of Arizona ("Arizona/Smith"), to Secretary, dated November 15, 1990; Patricia A. Small, The Associate Treasurer, The Regents of the University of California ("University of California"), to Secretary, dated November 16, 1990; Dean Furbush, Center for Study of Futures and Options Market, Virginia Polytechnic Institute and State University ("Virginia"), to Secretary, dated November 21, 1990; Eric T. Clothier, Senior Vice President, Wells Fargo Nikko Investment Advisors ("Wells Fargo"), to Secretary, dated November 27, 1990; R. Steven Wunsch, President, Wunsch Auction Systems, Inc. ("Steven Wunsch"), to Secretary, dated November 27, 1990 and January 31, 1991.

[14] See letters from: James T. Duffy, Senior Vice President and General Counsel, American Stock Exchange ("Amex"), to Secretary, dated December 14, 1990; Lynn Nellius, Secretary, National Association of Securities Dealers ("NASD"), to Secretary, dated December 7, 1990; James E. Buck, Senior Vice President and Secretary, New York Stock Exchange ("NYSE"), to Secretary, dated January 7, 1991; David P. Semak, Vice President Regulation, Pacific Stock Exchange ("PSE"), to Secretary, dated November 29, 1990; William W. Uchimoto, General Counsel, Philadelphia Stock Exchange ("PHLX"), to Secretary, dated December 5, 1990.

[15] *See e.g.*, University of California letter, Aronson letter, Trust Company letter.

[16] TSA letter at 1.

[17] *See* Arizona/LaMaster letter at 2.

[18] Wunsch letter at 4.

[19] Securities Exchange Act Release No. 26708 (April 11, 1989), 54 FR 15429.

[20] NYSE letter at 3.

In addition, the NYSE argued that the proper focus of registration which is "not practicable" under the statute should be that which is not practicable for the Commission rather than the proposed exchange. The NYSE argued that "[w]hile the legislative history of the Act sheds little light on what Congress had in mind, the sense of the language and the contemporaneous actions of the Kennedy and Landis Commissions suggest that Congress intended that the burden in question was the one upon the Commission, not that upon the applicant exchange." [21] The NYSE pointed to the exemptions given the Manila, Philippines Exchange and Honolulu Exchange as examples of when registration was "not practicable" for the Commission in 1934 because of the difficulties in oversight as communication with and travel to those exchanges would have been limited. Finally, the NYSE argued that, even if the concept of practicability could be interpreted to apply to the exchange itself, WASI has not met its burden of proving impracticability, but rather than cited only "serious, perhaps insurmountable difficulties," in registering its System under section 6.

The NASD, PSE, and PHLX argued that the Commission should develop concrete standards defining "limited volume" before it grants WASI an exemption from registration.[22] In addition, the NYSE argued that section 5's language requires registration if WASI's volume, expressed either in number and transactions or number of shares, exceeds either the transaction volume or the share volume of the smallest registered exchanges as measured on a stock-by-stock basis.[23]

Even with the existing "limited volume" guidelines, Amex and PSE argued that Wunsch has not shown that it fits within the "limited volume" exemption. The PSE pointed to the lack of any prediction of WASI's volume and noted that WASI simply states, without proof, that the nature of the system will result in a sufficiently limited trading volume to eliminate the need for registration as an exchange. The PSE and NYSE argued it is likely that both the immediate and future volume of the Wunsch's system could be "sizable" as its users could be among the most significant volume traders in the nation.[24] In addition, the PSE, Amex, and NYSE argued that the large capacity of the Wunsch System—a capacity greater than that of the NYSE—indicates that volume on the Wunsch System will not in fact be limited.[25] Instead, these commentators urged that the "limited volume" exemption should be reserved for those entities that serve only a niche market with a clearly limited investor base.

Both the NASD and the PHLX questioned how and to whom WASI will be required to report its trading activity. The PHLX asked if WASI trading would be reported to the NASD.[26] The NASD suggested that Form T is inappropriate for WASI as Form T is limited to the reporting of transactions effected by NASD members over-the-counter. Further, the NASD suggested that WASI be required to participate in the Consolidated Tape Association ("CTA") and the NASDAQ/NMS reporting plans. Alternatively, the NASD suggested that WASI could distribute auction results through vendor channels; the NASD recommended that registration as an exclusive securities information processor ("SIP") would then be necessary.[27]

The commentators also raised the question of whether granting an exemption would pose a threat to investors. The NASD argued that since WASI is not a self-regulatory organization ("SRO"), it therefore has no statutory responsibility to surveil trades consummated through its System. The NASD asked that the Commission condition the grant of section 5 exemption upon WASI's entering into a suitable agreement with an SRO for routine trading surveillance.[28] The PHLX also expressed concern for investor protection citing section 6 and other Commission requirements for registered national securities exchanges which mandate a comprehensive scheme of self-regulatory oversight, e.g., market surveillance, audit trail monitoring.

Both the NASD and PHLX questioned whether WASI would be responsible for removing an affected security if either a primary market or the Commission suspended trading in an eligible security.[29] The NASD asked that WASI's application be amended to clarify the responsibilities of WASI and BT Brokerage with respect to regulatory halts imposed by the Commission or an SRO.

The NYSE and PHLX argued that granting WASI an exemption from registration would result in unequal regulation of exchanges and therefore in unfair competition. The PHLX expressed concern that WASI would have an advantage over national securities exchanges that may offer similar automated services. If WASI is not registered as a national securities exchange under section 6 of the Act, WASI will not be subject to the "intensive regulatory rule filing regimen" of section 19(b) and rule 19b–4.[30] The PHLX questioned why SROs must pay the expense of justifying security and capacity measures of their systems when private systems such as Wunsch will avoid the expense of Commission scrutiny. The PHLX argued that Commission review also puts SROs at a competitive disadvantage when introducing new products and services, as the rule filing and public notice required under the Administrative Procedure Act ("APA") "discloses the internal operations of the exchange to the world." [31] The PHLX argued that

[21] Appendix to NYSE letter at 2.

[22] Two commentators on the Commission's release proposing rule 15c2–10, addressed more specifically the proper interpretation of the term "limited volume." *See* Securities Exchange Act Release No. 26708 (April 11, 1989), 54 FR 15429. The Chicago Board Options Exchange ("CBOE") suggested that the term "limited volume" should be defined in terms of a maximum dollar volume or percentage share of the relevant market, whichever is the lower standard; it stated that the number and characteristics of the participants, as well as the characteristics of the instruments traded, would be relevant to determing the appropriate dollar volume or percentage share. CBOE further suggested that the maximum threshold for a limited volume exemption should be either 1 percent of the relevant market or a previously established dollar volume amount, whichever is lower. In other words, the CBOE felt that the overall concept of limited volume was meant to be a *de minimis* or insignificant amount of volume. The Chicago Board of Trade ("CBT") stated that all three elements of the test proposed by the Commission could be relevent to a determination to grant an exemption to a particular exchange, however, CBT cautioned that, in applying those factors, the Commission should not "swallow the exchange registration rule" and thus defeat Congress' purpose. Letters from: (1) Alger B. Chapman, Chairman, CBOE, to the Commission, dated August 7, 1989 ("CBOE letter") and (2) Thomas R. Donovan, President, ("CBT"), to the Commission, dated July 19, 1989 ("CBT letter"). These letters are contained in Public File No. S7–13–89.

[23] NYSE letter at 2.

[24] PSE letter at 3. Appendix to NYSE letter at 3, note 6.

[25] PSE letter at 3; Amex letter at 4; and NYSE letter at 3, note 6. PHLX argued that WASI has no incentive to ensure a low level of trading on its system and that Wunsch will try to increase it to the highest degree. PHLX letter at 5.

[26] See PHLX letter at 2, note 4.

[27] NYSE also raises the issue of SIP registration in appendix to NYSE letter at 4, note 8.

[28] The NASD points out that an agreement could be fashioned from existing agreements which have been implemented pursuant to rule 17d–2 under the Act.

[29] The Commission has the authority to suspend trading in a security pursuant to section 12(k) of the Act. A primary market may also suspend trading in a security (*i.e.*, for pending news).

[30] PHLX letter at 1.

[31] PHLX letter at 2.

unfair competition and unequal regulation demand that Wunsch be subject to the standards being applied to current SRO sponsored automated systems.

The NYSE echoed these concerns and identified activities that an exempted exchange would be able to undertake but a national securities exchange could not, *e.g.*, trade stocks and corporate bonds without regard to whether they are registered under section 12 of the Act, permit issuers to trade their own securities during an off-hours pricing session without regard to the timing restrictions of rule 10b–18,[32] and trade OTC stocks unconstrained by the 100-stock pilot to which national securities exchanges are limited.[33]

Both NYSE and PHLX raised the concern that granting WASI an exemption would create a private institutional market which would fragment the current market into separate institutional and retail markets thus working against the goals of the National Market System ("NMS") set out by the 1975 Acts. Order flow that is diverted to "this shadow market will be taken away from the NMS auction environment which will result in fewer orders interacting in the national auction to determine the best price in the nation." [34] Both commentators argued that if WASI were able to "cherry pick" the institutional orders that do not require a continuous auction, the listed securities market pricing would be less efficient because price spreads would grow, adding more cost to the continuous market across fewer orders.[35]

IV. Discussion

Section 5 of the Act requires that all exchanges subject to the jurisdiction of the United States either register with the Commission as national securities exchanges or obtain a Commission exemption from that requirement.[36] Section 5 authorizes the Commission to grant an exemption from registration if the Commission concludes that, "by reason of the limited volume of transactions effected on [the] exchange, it is not practicable and not necessary or appropriate in the public interest or for the protection of investors" to require such registration.[37] Under the statute, the Commission is required to make a threshold conclusion that the exchange has (or will have) a limited volume of transactions, and an additional two-pronged determination that, by reason of that limited volume, it is not practicable and not necessary or appropriate in the public interest or for the protection of investors to require registration.

A. Limited Volume

Because the Wunsch System has not operated, it is appropriate for the Commission to predict the volume of transactions the Wunsch System will experience.[38] We believe that it is reasonable to predict that the Wunsch System will have a limited volume of transactions, based on the facts that the Wunsch System proposes to operate by conducting single auctions at discrete, relatively infrequent points of time (no more frequently than once a day, and initially only three times a week); and without the participation of broker-dealers with market-making obligations.[39] The predictability that the System will see only limited volume is substantially increased by the fact that it will operate after normal trading hours in the United States. At this time, relatively little trading occurs in the U.S. during the after-hours period. While some trading does occur overseas in U.S. stocks, particularly through the facilities of the International Stock Exchange ("ISE"), much of this trading appears to involve arbitrage or other pre-negotiated trades. These pre-negotiated trades would not appear to be benefitted by the auction characteristics of the System. Moreover, the attractiveness of the novel, fully-disclosed single priced auction feature of the System is entirely unproven. While a significant number of institutional market participants clearly are reviewing participation in the System, relatively few institutional investors have previously demonstrated a willingness to disclose their priced orders to other market professionals. Accordingly, the Commission believes that it is reasonable to predict that the auctions conducted by the System will result in only a very limited number of executions and a limited share volume.

The statute provides no absolute guidelines as to what level of volume does not justify a continuing exemption. The Commission agrees generally with the NYSE, however, that the present volume levels of fully regulated national securities exchanges provide a useful benchmark. The Commission would be concerned over the competitive implications of the Wunsch System operating pursuant to an exemption if its volume exceeded that of any of the fully regulated national securities exchanges. The Cincinnati Stock Exchange ("CSE") is the smallest of the currently registered fully regulated national securities exchanges in terms of shares and transactions.[40]

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[32] In this connection, we note that rule 10b–18 is a safe harbor provision that creates timing restrictions on issuers re-purchasing their own stock. Conduct falling outside of this safe harbor is neither *per se* legal or illegal. Thus, the exemption for WASI neither sanctions trading outside the safe-harbor conditions of rule 10b–18 nor prohibits it.

[33] *See* Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917.

[34] PHLX letter at 5.

[35] NYSE letter at 3.

[36] 15 U.S.C. 78e (1988). As a preliminary matter, the Commission has determined that WASI is an "exchange" as that term is defined in section 3(a)(1) of the Act, because the elements of the WASI trading system discussed above, such as the mechanism for setting the equilibrium price, are designed to create a liquid market where buyers and sellers have a reasonable expectation that they can regularly execute orders. See Securities Exchange Act Release No. 27611 (Jan. 12, 1990); 55 FR 1890 (January 19, 1990).

[37] *Id.*

[38] The section 5 exemption is not limited by its terms to exchanges with operating histories. In this connection, the Commission disagrees with the views, expressed by the NYSE, that section 5 is a "one-time transitional provision designed to address the circumstances of 1934", and that the section 5 exemption is available only to exchanges with operating histories, and not to start-up exchanges such as the Wunsch System. Without a clearer indication from Congress, the Commission is unwilling to employ a narrow reading of the limited volume requirement to take a section that appears to have prospective application and make it retrospective only.

[39] The fact that the capacity of the Wunsch System exceeds that of the NYSE and Amex does not necessarily imply that the volume of transactions on the Wunsch System will not be limited. At a threshold level, system capacity does not bear a direct relationship to actual volume: A system sponsor may choose to build capacity in excess of the volume that reasonably can be expected based on the configuration of the system. Moreover, it is reasonable for WASI to build large capacity into the System because order input and access messages will be heavily concentrated in discrete periods of time rather than spread throughout an entire trading day, as in the case of the NYSE, Amex and other exchanges. The large capacity is also reasonable as WASI may someday seek to register as an exchange.

[40] For calendar year 1990, CSE's average daily volume, expressed in reported trades was 717; its average daily volume, expressed in shares traded was 1,238,241. We do not believe that the Spokane Stock Exchange ("SSE") is an appropriate measure of limited volume in this context. For calendar year 1990, the SSE's average daily volume expressed in reported trades was 7; its average daily volume, expressed in shares traded was 30,063. The SSE is limited purpose market specializing purely in local issues that is exempt from participation in the national trading and quotation reporting systems. Thus, the SSE's volume is not representative of the minimum levels of volume that preclude consideration olf an exemption from registration. We would emphasize, however, that this does not suggest that the SSE would qualify for an exemption; we expect it would be difficult for the SSE to show that it is impractical and not in the public interest for it to be registered. Among other things, the SSE holds itself out as an exchange and has operated as a registered exchange.

B. By Reason of This Anticipated Limited Volume, Registration of the Wunsch System as a National Securities Exchanges is Not Practicable

In view of the limited volume anticipated to be attained by the Wunsch System, the Commission believes that it would be so disproportionately burdensome to compel WASI to satisfy all of the regulatory requirements imposed upon registered national securities exchanges under the Act as to be impracticable. The Act requires all SROs, including national securities exchanges,[41] among other things, to file with the Commission, copies of proposed rules and proposed rule changes for Commission approval or disapproval,[42] to assure fair representation of "members," [43] to undertake a long list of other duties and responsibilities,[44] and to comply with significant limitations.[45] Although the costs of complying with such obligations and limitations are themselves in large part a function of the volume of an exchange, so that they can be expected to be less for a smaller exchange than for a larger one, these costs do not decrease in a purely linear fashion as volume decreases. Thus, there are a minimum fixed costs of compliance that these obligations entail even for small exchanges. Moreover, the costs of compliance with these requirements and limitations are especially large, if not prohibitive, for proprietary exchanges designed to accommodate direct institutional trading.[46] On the other hand, the revenues of an exchange are more directly related to volume and are not in any sense fixed.[47] For a proprietary exchange with the limited volume and thus limited revenues we anticipate for WASI, the costs of compliance with the obligations and limitations of registration would represent prohibitive business, administrative, and financial burdens. Thus, in light of the limited volume of trading anticipated to be experienced by the Wunsch System, the Commission believes that it would be disproportionately burdensome to subject WASI to the rule filing requirements.[48]

C. In View of Its Limited Volume, It Is Not Necessary or Appropriate in the Public Interest or for the Protection of Investors To Compel the Wunsch System To Register as a National Securities Exchange

In making this final determination, the Commission has considered whether the grant of an exemption may: (1) Result in gaps in the Commission's regulation of the Wunsch System or in WASI's own surveillance of trading taking place in the System; or (2) afford WASI an undue competitive advantage vis-a-vis other trading systems, especially systems operated as national securities exchanges; or (3) unfairly or inappropriately fragment the markets for equity and fixed income securities by attracting volume away from the NYSE and the regional exchanges. In light of the limited volume of trading anticipated to be one on the System, and in view of the regulatory protections over system activity that are either currently in place or that will be imposed by the Commission upon the System in the form of terms and conditions upon this exemption, the Commission finds that it is not necessary or appropriate in the public interest or for the protection of investors to require the System to register.

1. Possible Gaps in Regulation

a. *Trade Reporting.* As a preliminary matter, the Commission notes that, regardless of the NYSE's position concerning the location of WASI trades for purposes of NYSE rule 390, the Commission believes that trades negotiated in the U.S. on a U.S. exchange are domestic, not foreign trades. The fact that the trade may be time-stamped in London for purposes of rule 390 does not in our view affect the obligation of WASI and BT Brokerage to maintain a complete record of such trades and report them as U.S. trades to U.S. regulatory and self-regulatory authorities and, where applicable, to U.S. reporting systems.

b. *Surveillance and Other Matters.* WASI has developed internal surveillance procedures designed to identify possible violations of the Act by WASI employees and by System participants. In addition, the basic system design of the System ensures a complete locked in audit trail, including information as to the institution involved in the trade. WASI has designed a system of surveilling activity on its market through use of the audit trail to detect abusive trading activity. In addition to its own internal surveillance procedures, WASI has undertaken to provide to the SROs information similar to that provided by the SROs to the consolidated audit trail.[49] In addition, WASI has an arrangement to provide trade reporting to a vendor for public dissemination.[50]

[41] The term "self-regulatory organization", as defined in section 3(a)(26) of the Act, encompasses national securities exchanges, registered securities associations, registered clearing agencies, and, for some purposes, the Municipal Securities Rulemaking Board ("MSRB").

[42] Section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1).

[43] Section 6(b)(3) of the Act. The term "member" is defined generally under section 3(a)(3) A of Act as a registered broker-dealer or natural person associated with a registered broker-dealer—institutions required by the Commission to comply with the rules of an exchange pursuant to section 6(f) of Act are included in the definition of "member," but only for the purposes of certain enumerated sections of the Act.

[44] *See* sections 6(b)(1)–6(b)(8) of the Act.

[45] *See e.g.*, section 11(a) of the Act (members of exchanges may not trade for their own account) and section 6(c)(1) (exchanges generally may only admit broker-dealers as "members").

[46] *See e.g.*, section 6(b)(3) of the Act (requirement that an exchange assure fair representation of its "members"); section 6(b)(6) of the Act (requirement that an exchange have an apparatus for the appropriate disciplining of members and persons associated with members); and section 6(c)(1) of the Act (limitation that exchanges generally admit only registered broker-dealers as members).

[47] In this connection we note that WASI's sole source of revenue is transaction fees.

[48] The Commission does not credit the NYSE's views that WASI somehow bears the burden of proving impracticability, or that an exemption should be granted only if registration is impracticable for the Commission. In discussing practicability, section 5 references "the opinion of the Commission," thus leaving the Commission free to evaluate the representations made in the application for exemption, to investigate matters on its own, or to do both. Moreover, although it may have been impracticable, as the NYSE states, for the Commission to visit some of the exchanges to which it granted exemptions in the 1930s (*i.e.*, the Honolulu Stock Exchange), the Commission did not base its finding of impracticability on the difficulties of travel and communication over long distances, because the Commission also exempted the Richmond Stock Exchange, which did not pose similar difficulties (*see* Securities Exchange Act Release No. 432 (December 2, 1935)). The term "practicable" should thus not be applied narrowly to refer only to the convenience of the Commission, but should be interpreted more broadly to take into account undue hardship to the applicant.

[49] The major registered securities exchanges and the NASD submit their audit trail data—time-sequenced compilations of trading activity, including certain characteristics of the trade (*i.e.*, price, quantity, time, principal/agency designations, and the identities of clearing firms and executing brokers)—to the consolidated tape operated by the Consolidated Tape Association ("CTA"); in turn, the Securities Information Automation Corporation ("SIAC"), under the auspices of the Intermarket Surveillance Group ("ISG"), receives the feed of information from the consolidated tape, combines that information with clearing information and with information concerning late trades submitted to the NASD on Form T, and distributes that information to the registered exchanges and the NASD to assist their surveillance efforts.

[50] The NASD suggests that WASI be required to submit real-time transaction information to the CTA; similarly, the NYSE urges that WASI disclose competitive information comparable to that disclosed by the national securities exchanges. There is currently no real-time transaction reporting service, including CTA and NASDAQ, that is available to systems that, like the Wunsch System, trade outside the NYSE's normal trading hours. Thus, it is not feasible for WASI to report trades to

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Moreover, BT Brokerage, a broker-dealer registered with the Commission under section 15(b) of the Act and a member of the NYSE, NASD, and Amex, is subject to the oversight and examination authority of the Commission and those self-regulatory organizations, and, more specifically, to requirements to maintain adequate net capital (rule 15c3–1 under the Act), to provide for the protection of customers' securities (rule 15c3–3 under the Act), and to keep records and make reports to the Commission (rules 17a–3 and 17a–5 under the Act). The fact that a registered broker-dealer will be involved in all executions effected by the Stystem will provide both the Commission and the SROs with full authority to examine trading which occurs in the System.

Finally, this exemption from registration is subject to specific terms and conditions, including, among others, requirements that WASI: (1) Permit the Commission to conduct examinations of the System; (2) comply with its agreement to report volume and price data to the Commission and to SROs, and provide other information (such as the identities of participants who have entered orders) to the Commission and the SROs upon request; (3) comply with its undertaking to implement procedures to conduct surveillance of its employees and adopt requirements to ensure the non-disclosure of confidential information; (4) suspend trading in any security subject to regulatory halt for pending news called by the primary market for the security or during suspensions of trading ordered by the Commission pursuant to section 12(k) of the Act, and consult with the Commission subsequent to an exchange or NASDAQ session in which an operational trading halt has occurred or a circuit breaker has gone into effect; (5) suspend any auction at the request of the Commission, assuming adequate notice is given, and (6) continue to comply with the capacity, security, and contingency planning guidelines contained in the Commission's Automation Review Policy ("ARP").[51]

The Commission may rescind the exemption if WASI does not adhere to those terms and conditions.[52] The Commission believes that the combination of self-surveillance by WASI, the provision of information to the Commission, SROs, and vendors, and the protections of broker-dealer regulation and of Commission control over the exemption will ensure that there are no gaps in the regulation of the System that could undermine the objectives of the Act.

2. Concerns about Possible Competitive Unfairness and Undue Market Fragmentation and Disintermediation

Several commentators voiced a concern that the grant of an exemption to WASI would create an uneven playing field in which the Wunsch System would be free from the regulatory regime to which registered trading markets are subject. For example, commentators suggested that the Wunsch System, by enabling its participants to "cherry pick" selected securities from the registered markets, would contribute to the fragmentation of those markets, ultimately increasing spreads in those markets. Finally, the concern (discussed above) that the Wunsch System be subject to transaction reporting requirements similar to those applicable to the registered markets, touches on both the competitive concern and the fragmentation concern.

Given the limited volume of trading anticipated to be done on the Wunsch System, any incongruity in regulatory requirements and any slight fragmentation of the markets for equity and fixed income securities, are outweighed by the disproportionately high burden that would be borne by WASI if the System were forced to conform to the structure contemplated by the Act to apply to national securities exchanges, or to consolidate its trading and trade reporting with that of other markets. Given the predicted limited volume, the Commission finds that it is not necessary or appropriate in the public interest or for the protection of investors, to impose such burdens on the Wunsch System.[53]

V. Terms and Conditions of the Exemption

Pursuant to its authority to ensure that the exemption is consistent with the public interest,[54] the Commission hereby imposes the following requirements upon WASI as conditions of this exemption: (1) Continued registration of BT Brokerage as a broker-dealer under section 15(b) of the Act and the continued membership of BT Brokerage in at least one of the three SROs—the NYSE, NASD, and Amex, of which it is currently a member; (2) the effective registration of any security traded on the Wunsch System under sections 12(b) or 12(g) of the Act, or the provision of information with respect to the security pursuant to section 15(d) of the Act, or an exemption from registration because the security is a "government security" as defined in section 3(a)(42) (A), (B), or (C) of the Act; (3) the Wunsch System's supplying to the Commission, on a monthly basis, or on a more frequent basis, if deemed necessary by the staff, data describing (a) the number and identity of participants that have signed participation agreements and of applicants that have been denied application, and the reasons for such denial,(b) the number of auctions conducted and the identity of securities included in each auction, (c) the prices at which particular blocks of securities were sold during the auction, (d) the number and volume of any transactions that fail to settle after an auction and

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the CTA and the NASDAQ/NMS reporting systems; WASI's agreement to seek agreements with vendors and report to self-regulatory organizations is the most comprehensive trade reporting that can be required of WASI at this time given WASI's likely limited volume. In this connection, WASI has represented that all trades matched through the System, whether or not receiving formal execution by BT Brokerage in London, will be reported to the SROs for surveillance purposes.

[51] *See* Automation Review Policy, Securities Exchange Act Release No. 27445 (November 16, 1990), 54 FR 48703 (November 24, 1989). As part of its application, WASI has submitted documentation of its capacity testing procedures, its security procedure, and its contingency plans.

[52] The NASD suggests that, if WASI is required to submit to the Commission a plan for the distribution of auction results to vendors, WASI should register with the Commission as an exclusive securities information processor ("SIP"). Such registration is not required because WASI does not meet the definition of "Exclusive processor" set forth in section 3(a)(22)(B) of the Act. That Section defines "exclusive processor" as, in pertinent part, "any securities information processor * * * which, directly or indirectly, engages on an exclusive basis on behalf of *any national securities exchange or registered securities association* * * * in collecting, processing, or preparing" certain information for distribution or publication (emphasis added). By virtue of this exemption from registration, the Wunsch System falls outside the definition of a national securities exchange because the term "national securities exchange" implies a registered entity (*see, e.g.*, sections 3(a)(26) of the Act (defining the term "self-regulatory organization") and section 6(a) of the Act. As a result, WASI, which collects trade information generated by the Wunsch System, nevertheless falls outside the definition of "exclusive processor" and thus, absent a specific Commission rule or order finding that registration is necessary or appropriate in the public interest, for the protection of investors, or for the achievement of the purposes of section 11A of the Act, is not subject to registration under section 11A(b)(1) of the Act.

[53] In this connection, any competitive concerns are diminished by the regulatory requirements imposed upon the System under the terms and conditions of this exemption which, although not intended to duplicate the regulatory regime to which national securities exchanges are subject, nevertheless impose significant protections. For example, the Wunsch System may trade only securities registered pursuant to sections 12(b), 12(g), or 15(d) of the Act. As a result of this condition, foreign issuers will not have an "open door" through which to introduce unregistered foreign securities to U.S. investors without adequate disclosure.

[54] *See* section 5 of the Act.

the identity of defaulting parties, and (e) the daily dollar, transaction, and share volume of business transaction through the system;[55] (4) an undertaking by WASI to (a) adopt and implement procedures to conduct surveillance of trading by WASI employees, to conduct surveillance of trading in WASI by WASI participants for potential insider trading or manipulative abuses, ensure the protection of confidential information in the possession of WASI employees, and, in response to regulatory trading halts on other markets, either suspend auction trading on the Wunsch System or consult with the Commission with respect to a possible suspension of trading,[56] (b) cooperate with any investigation of trading on the Wunsch System conducted by any SRO or by the Commission,[57] and (c) provides SROs and the Commission with any requested information pertaining to trading on the Wunsch System; (5) continued compliance with the capacity, security and contingency plan requirements of the ARP; and (6) the provision of 30 days prior notice of any material changes in the operation of the auction. The Commission, of course, reserves the right to apply further conditions or rescind the exemption if circumstances change, the System does not operate as represented, or if the Commission deems it otherwise necessary for the protection of investors and the public interest. In this connection, as discussed in detail in this Order, should the Commission learn that any of the conditions set forth in this Order or otherwise imposed upon the granting of this exemption have been breached, or should the reports provided by WASI indicate that average weekly transaction or trade volume [58] has risen to levels equivalent to those of the Cincinnati Stock Exchange ("CSE") [59] over the first year of operation, the Commission will commence a review to determine whether to rescind the exemption.[60]

VI. Conclusion

The Commission has reviewed WASI's application for exemption from registration as a national securities exchange and has determined that WASI qualifies for the limited volume exemption under the Act.

It is therefore ordered, pursuant to section 5 of the Act, that WASI's exemption from registration as a national securities exchange be granted, subject to the conditions contained in this Order.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–4659 Filed 2–27–91; 8:45 am]

BILLING CODE 8010–01–M

[55] In order to meet these conditions, WASI has submitted to the staff written representations that it will undertake to provide to the Commission (and to any self-regulatory organization): (1) At the end of the next business day after a particular auction, data describing the securities traded, and the prices and aggregate volumes of securities traded in the auction; (2) exception reports on unusual trading activity and abnormally high rates of order cancellations, by the end of the business day following the last auction whose data is included in the exception report; and (3) upon reasonable request, supplemental post-auction data, including the identities of auction participants, by the next business day after the request. In addition, WASI undertakes to accord the Commission real-time, log-in access to each ongoing auction, with the capacity to discover the identity of participants whose orders are visible (but anonymous) in the System.

[56] In order to meet these conditions, WASI has undertaken to adopt and implement employee surveillance procedures, to impose non-disclosure requirements applicable to WASI employees in possession of confidential information, to implement specific surveillance and exception reporting procedures, and to halt any scheduled auction at the request of the Commission, provided adequate notice is given. WASI will consult with the Commission before conducting any auction subsequent to an exchange session in which a trading halt has occurred or a circuit breaker has gone into effect. Finally, WASI will not permit trading in any security subject to a regulatory halt for pending news that has been called by the primary market for the affected security or during suspensions of trading ordered by the Commission pursuant to section 12(k) of the Act.

[57] In this connection, the written undertakings submitted by WASI grant the Commission examination authority to conduct inspections of System operations at any time.

[58] We agree with the NYSE that for these purposes the Commission should give effect to all trades effected through the Wunsch System, without regard to whether they purport to be domestic or foreign. *See supra,* note 47. We also agree with the NYSE that there may be reason to expect the System to generate, relative to the regional national securities exchanges, a small number of transactions involving a large number of shares. We address this possibility by taking into account not only the number of transactions, but the number of shares as well. We do not agree with the NYSE's contention that an analysis of whether the threshold has been breached must be conducted, as to listed stocks, on a stock-by-stock basis. If, as the NYSE fears, trading activity on the System is concentrated in the most active stocks traded on certain national securities exchanges, rather than spread over a broader range of stocks, that high level of activity can be expected to be reflected in the overall transaction or share volume of the System, which the Commission will closely monitor in order to judge whether the threshold has been breached.

[59] *See supra* note 17.

[60] As set forth above, a condition of this exemption is that WASI supply the Commission with monthly reports detailing for each security traded on WASI the dollar, transaction, and share volume in the System.

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2475, Amendment 2]

Alabama (With Contiguous Counties in Tennessee, Mississippi & Georgia): Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with an amendment dated January 16, 1991, to the President's major disaster declaration of January 4, to establish the incident period as beginning December 21, 1990 and continuing through January 16, 1991.

All other information remains the same, i.e., the termination date for filing applications for physical damage is March 4, 1991, and for economic injury until the close of business on October 4, 1991.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated; February 4, 1991.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91–4761 Filed 2–27–91; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2477, Amt. 2]

Indiana (With Contiguous Counties in Ohio, Kentucky, Michigan, & Illinois): Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with amendments dated January 18, 22, 23, and 29, 1991, to the President's major disaster declaration of January 5, to include the Counties of Benton, Daviess, Jennings, LaPorte, Martin, Perry, Randolph, Spencer, and Wells in the State of Indiana as a disaster area as a result of damages caused by severe storms and flooding and to establish the incident period as beginning December 28, 1990 and continuing through January 22, 1991.

In addition, applications for economic injury loans from small businesses located in the contiguous County of Orange in the State of Indiana and Breckenridge, Daviess, and Hancock Counties in the State of Kentucky may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

The economic injury numbers are 722900 for the State of Indiana and 722800 for the State of Kentucky.

All other information remains the same, i.e., the termination date for filing applications for physical damage is March 7, 1991, and for economic injury until the close of business on October 7, 1991.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: February 15, 1991.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91–4762 Filed 2–27–91; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2478]

Federated States of Micronesia; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on January 17, 1991, I find that the State of Pohnpei (Ponape) in the Federated States of Micronesia constitutes a disaster area as a result of damages caused by Typhoon Russ which occurred December 16 through December 17, 1990. Applications for loans for physical damage may be filed until the close of business on March 18, 1991, and for loans for economic injury until the close of business on October 17, 1991, at the address listed below: Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, CA 95853–4795, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 247806 and for economic injury the number is 723500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: January 31, 1991.

Alfred E. Judd,

Acting Assistant Administrator.

[FR Doc. 91–4763 Filed 2–27–91; 8:45 am]

BILLING CODE 8025–01–M

U.S. SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2474, Amdt. 2]

Mississippi (With Contiguous Counties in Louisiana & Alabama): Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with an amendment dated February 11, 1991, to the President's major disaster declaration of January 3, to include the Counties of Itawamba and Webster in the State of Mississippi as a disaster area as a result of damages caused by severe storms, tornadoes, and flooding beginning December 19, 1990 and continuing through January 14, 1991.

In addition, applications for economic injury loans from small businesses located in the contiguous Counties of Calhoun, Choctaw, Prentiss, and Tishomingo in the State of Mississippi may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

All other information remains the same, i.e., the termination date for filing applications for physical damage is March 3, 1991, and for economic injury until the close of business on October 3, 1991.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: February 15, 1991.

Alfred E. Judd,

Acting Assistant, Administrator for Disaster Assistance.

[FR Doc. 91–4764 Filed 2–27–91; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2476, Amdt. 2]

Tennessee (With Contiguous Counties in MO, AR, KY, MS, NC, & GA); Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with an amendment dated January 16, 1991, to the President's major disaster declaration of January 4, to establish the incident period as beginning December 19, 1990 and continuing through January 14, 1991.

All other information remains the same, i.e., the termination date for filing applications for physical damage is March 4, 1991, and for economic injury until the close of business on October 4, 1991.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: February 4, 1991.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91–4765 Filed 2–27–91; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Office of the Legal Adviser

[Public Notice 1350]

Claims for Property Located in the Czech and Slovak Federal Republic

On October 2, 1990, the Federal Assembly of the Czech and Slovak Federal Republic enacted the "Law on Mitigation of the Consequences of Certain Property Losses" (403/1990 Sb.) which provides for the restitution of property or payment of compensation for property expropriated or taken by the Czechoslovakian Government during a certain time period. The law went into effect on November 1, 1990 and provides for a 6-month period within which claims must be filed.

Claimants may wish to consider sending their claims by registered mail, so that they will have proof that the applications were submitted. There is no single address to which claims are to be submitted. Rather, claimants must file by April 30, 1991 with the appropriate organization or ministry in Czechoslovakia.

The United States Government cannot advise claimants as to whether their claims will be considered valid. In considering whether to pursue their claims, claimants should examine the provisions of the October 2 law to determine whether the law may apply to them.

It is important to note that claimants should *not* attempt to register their claims by sending them to the U.S. State Department, the U.S. Foreign Claims Settlement Commission, or any other agency of the U.S. Government. The U.S. Government may not register claims under the October 2 law on its nationals' behalf.

The Foreign Claims Settlement Commission ("FCSC"), an independent agency within the Department of Justice, was authorized to adjudicate U.S. citizens' claims against Czechoslovakia for uncompensated expropriations and other takings of property under two statutes enacted in 1958 and 1981. The awards entered by the FCSC in those claims, totalling some $113 million, were paid pro rata by the Department of Treasury out of an $81.5 million compensation fund received from the Government of Czechoslovakia under the terms of the U.S.—Czechoslovak claims settlement agreement which took effect on February 2, 1982.

The FCSC completed the adjudication of all claims against Czechoslovakia on February 24, 1985, and since then, it has had no further authority to act on such claims or to receive additional filings. However, as a service to claimants, the FCSC will furnish, upon request, a letter confirming that an individual or organization has not filed a claim against Czechoslovakia, or received payment of an award out of the compensation fund received from Czechoslovakia under the U.S.—Czechoslovakia claims settlement agreement, if such was the case or had applied with the FCSC but was subsequently denied. Interested persons should direct their request to the Foreign Claims Settlement Commission, Attn: David Bradley, Chief Counsel, Washington, DC 20579 (Tel. 202–208–7730). Claimants should be aware that the FCSC letter is *not* to be considered as the only necessary certificate. As expressed in the law, the proper certificate must be issued in Czechoslovakia.

Claimants seeking further information regarding the new Czechoslovakian property laws should contact the Embassy of the Czech and Slovak Federal Republic, 3900 Linnean Ave., NW., Washington, DC 20008, Attn: Vladimir Galuska, Consul (Tel: 202–363–6315). In view of the short deadline, claimants should not wait for responses to any inquiries before filing their claims. The Czech Embassy has notified the U.S. Government that the only proper way to register a claim is submit it to the proper organization in Czechoslovakia, and not to the Embassy in the United States. The Embassy recommends hiring a Czechoslovakia attorney to assist the claimant.

For the claimant's benefit, a list of attorneys who practice in Czechoslovakia, which was put together in July 1990, is available through the U.S. State Department. Copies may be obtained by contacting Tom Glover, Consular Affairs (Tel: 202–647–3445). Please note that the U.S. Government assumes no responsibilities for the professional ability or integrity of the attorneys on the list.

Claimants may also contact the Foreign Claims Settlement Commission (address and telephone number noted above) or the Office of International Claims and Investment Disputes, Department of State, 2100 K. St., NW., Washington, DC 20037–7180, Attn: Julie Haughn, Attorney Adviser (Tel: 202–653–5920).

Claimants should be advised, however, that neither the Foreign Claims Settlement Commission nor the Department of State's Legal Adviser's Office has any information concerning the law which is the subject of this notice other than what is noted here. Claimants are reminded that the U.S. Government cannot advise them as to whether their claims will result in any form of compensation.

Dated: February 11, 1991.

Ronald J. Bettauer,

Assistant Legal Adviser, Office of International Claims and Investment Diputes.

[FR Doc. 91–4728 Filed 2–27–91; 8:45 am]

BILLING CODE 4710–08–M

TENNESSEE VALLEY AUTHORITY

Tennessee River and Reservoir System Operation and Planning Review; Record of Decision

AGENCY: Tennessee Valley Authority.

ACTION: Issuance of the record of decision for TVA's Tennessee River and Reservoir System Operation and Planning Review.

SUMMARY: Notice is hereby given in accordance with the National Environmental Policy Act (NEPA) and section 5.4.9 of TVA's implementing procedures, 45 FR 54,511–15 (1980), that TVA has decided to adopt the preferred alternatives identified in TVA's final environmental impact statement (FEIS), "Tennessee River and Reservoir System Operation and Planning Review." A notice of availability of the FEIS was published in the Federal Register on January 4, 1991. TVA has decided to: (1) Maintain minimum flows below 16 dams and to aerate releases below 16 dams to increase dissolved oxygen in order to improve water quality, and (2) delay unrestricted and associated economic development.

FOR FURTHER INFORMATION: Copies of the record of decision and final environmental impact statement may be obtained by writing to the Tennessee Valley Authority, M. Paul Schmierbach, Manager, Environmental Quality, 309 Walnut Street, room 201, Knoxville, Tennessee 37902, or by calling (615) 632–6578.

Dated: February 22, 1991.

M. Paul Schmierbach,

Manager, Environmental Quality.

[FR Doc. 91–4700 Filed 2–27–91; 8:45 am]

BILLING CODE 8120–01–M

DEPARTMENT OF TRANSPORTATION

[Docket 37554]

Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Public Law 96–192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 80–2–69 established the first interim SFFL, and Order 90–12–48 established the currently effective two-month SFFL applicable through January 31, 1991.

In establishing the SFFL for the two-month period beginning February 1, 1991, we have projected non-fuel costs based on the year ended September 30, 1990 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

These projections reflect the dramatic increase in fuel prices precipitated by the August Mid East crisis. Indeed, on a compounded basis, the February 1991 SFFL indices overtake the two fuel surcharges granted by the Department in September and December 1990. Thus, carriers will be able to increase their fares further as a result of this order.

By Order 91–2–29 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic	1.5627
Latin America	1.6207
Pacific	2.0295
Canada	1.5377

For further information contact: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation:

Patrick V. Murphy,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 91–4784 Filed 2–27–91; 8:45 am]

BILLING CODE 4910–62–M

Office of the Secretary

Lima, Peru: Airport Security Standards

SUMMARY: The Secretary of Transportation has now determined that Jorge Chavez International Airport, Lima, Peru, maintains and administers effective security measures.

By notice published at 55 FR 53380 (December 28, 1990), I announced that I had determined on September 25, 1990 that Jorge Chavez International Airport, Lima, Peru, did not maintain and administer effective security measures. I now find that the security measures used at Jorge Chavez International Airport are effective. My determination is based on a recent Federal Aviation Administration assessment which reveals that security measures used at the airport now meet or exceed the Standards and Recommended Practices established by the International Civil Aviation Organization.

I have directed that a copy of this notice be published in the **Federal Register** and that the news media be notified of my determination. In addition, as a result of this determination, the FAA will direct that signs posted in U.S. airports relating to my December 24, 1990 determination be removed, and U.S. and foreign air carriers will no longer be required to provide notice of that determination to passengers purchasing tickets for transportation between the United States and Lima, Peru.

Dated: February 22, 1991.

Samuel K. Skinner,

Secretary of Transportation.

[FR Doc. 91-4767 Filed 2-27-91; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD8 91-01]

Lower Mississippi River Waterway Safety Advisory Committee

ACTION: Solicitation for membership.

SUMMARY: The U.S. Coast Guard is seeking applications for appointment to membership on the Lower Mississippi River Waterway Safety Advisory Committee. Present appointments will expire with the present committee charter on October 3, 1991. Approximately twenty-four memberships will be filled.

Applicants may be from State and local government, the marine industry, environmental groups, academia, and other interested entities. To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women.

The purpose of the committee is to provide local expertise on such matters as communications, surveillance, traffic control, anchorages, aids to navigation, and other related topics dealing with navigation safety in the Lower Mississippi River area as required by the Coast Guard. The committee normally meets once each quarter at various locations in the New Orleans area. Members serve voluntarily, without compensation from the Federal Government for salary, travel, or per diem. Term of membership will not exceed the expiration of the charter, October 3, 1993.

DATES: Requests for applications should be received no later than April 3, 1991. Completed applications should be returned no later than May 3, 1991.

ADDRESSES: Persons interested in applying should write to Commander, Eighth Coast Guard District (oan), Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396.

FOR FURTHER INFORMATION CONTACT: Commander C.T. Bohner, USCG, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander Eighth Coast Guard (oan) room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, telephone number (504) 589-4686.

Dated: February 20, 1991.

J.M. Loy,

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

[FR Doc. 91-4741 Filed 2-27-91; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

[Summary Notice No. PE-91-9]

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 March 20, 1991.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 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 Rules 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 Building, 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 February 21, 1991.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 23771.
Petitioner: Cessna Aircraft Company.
Sections of the FAR Affected: 14 CFR 91.9 and 91.531 (old 91.31 and 91.213)
Description of Relief Sought: To extend Exemption No. 4050E, which allows operators of Cessna Citation models 550, S550, 552, and 560 airplanes to operate these airplanes without a second-in-command pilot. Exemption No. 4050E will expire on July 31, 1991.

Docket No.: 25103.
Petitioner: Air Wisconsin, Inc.
Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378.
Description of Relief Sought: To extend Exemption No. 4803A, which allows petitioner to employ certain foreign original equipment manufacturers (OEM's) to perform maintenance, preventive maintenance, and alterations outside the United

States on its British Aerospace, Fokker, and Short Brothers, Ltd., aircraft. Exemption No. 4803A will expire on May 31, 1991.

Docket No.: 26454.

Petitioner: U.S. Department of Justice, Federal Bureau of Investigation

Sections of the FAR Affected: 14 CFR part 91

Description of Relief Sought: To allow petitioner's pilots relief from multiple sections of part 91 for the conduct of drug law enforcement operations and investigative programs.

Docket No.: 26461.

Petitioner: Aviation Services, Ltd.

Sections of the FAR Affected: 14 CFR 43.3(g)

Description of Relief Sought: To allow petitioner's pilots to perform the preventive maintenance function of removal and/or replacement of passenger seats on the PA32–3000 aircraft used in part 135 operations.

Docket No.: 26465.

Petitioner: National Air Transportation Association

Sections of the FAR Affected: 14 CFR 43.3(g)

Description of Relief Sought: To allow appropriately trained and qualified pilots of part 135 nonscheduled air carriers to remove and install passenger seats, medical equipment, and cargo restraining devices in aircraft operated under part 135. This exemption, if granted, would be applicable to all of petitioner's member part 135 nonscheduled air carrier companies who subscribe to the requirements of the petition and whose compliance with those requirements have been reviewed and accepted by the Administrator.

Dispositions of Petitions

Docket No.: 25664.

Petitioner: Gulfstream Pacific Airways, Inc.

Sections of the FAR Affected: 14 CFR 43.3 (a) and (g)

Description of Relief Sought/ Disposition: To allow pilots employed by petitioner to remove and install passenger seats when necessary to accommodate a flight. *Grant, February 14, 1991, Exemption No. 5278.*

[FR Doc. 91–4743 Filed 2–27–91; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Mifflin County, PA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Mifflin County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Mr. John A. Gerner, District Engineer, Federal Highway Administration, 228 Walnut Street, P.O. Box 1086, Harrisburg, Pennsylvania 17108–1086, Telephone: (717) 782–3411 or Joseph A. Walter, P.E., Liaison Engineer, Pennsylvania Department of Transportation, 1924–30 Daisy Street, Clearfield, Pennsylvania 16830, Telephone: (814) 765–0440.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation (PennDOT), will prepare an Environmental Impact Statement for a section of U.S. Route 22, in Mifflin County, Pennsylvania. Located near Lewistown, Pennsylvania, this six mile project will improve the safety and relieve traffic congestion on the section of U.S. Route 22. The western terminus and study area limits will be the intersection of S.R. 3007 and U.S. Route 22, approximately 2.5 miles West of Strodes Mills. The eastern terminus and study area limits will be approximately 1.0 mile East of the Borough of Lewistown at the intersection of U.S. Routes 22 and 322.

It is anticipated that at least four alternatives will be evaluated during the course of the study. Based on existing and projected traffic volumes, the build alternatives will be evaluated to determine the need for a four-lane facility to accommodate the traffic volumes. The alternates under consideration are: Upgrading the existing facility, transportation system management, an alternative on new location North of existing U.S. Route 22 with at least three (3) alternatives considered for both the western and eastern termini and the "NO BUILD" alternate. Two interchanges will be evaluated, one being at the western terminus in the vicinity of Strodes Mills and the second being the eastern terminus of relocated U.S. Route 22 at the intersection with U.S. Route 322 in the vicinity of Burnham.

A phased approach will be used to develop the Environmental Impact Statement. The initial phase of this project will be the development of the need for the project. A Preliminary Alternative Analysis will evaluate all suggested alternatives against the need, and environmental and engineering constraints. A Plan of Study for the Environmental Impact Statement will be prepared and circulated to State and Federal agencies for those alternatives recommended as feasible by the Preliminary Alternative Analysis.

The second phase of the study process will consist of analyzing the alternatives selected for detailed study. These alternatives will be the basis for the detailed environmental studies and the Environmental Impact Statement. From this analysis a preferred alternative will be identified which best meets the needs of the traffic demand, and satisfies the environmental, socioeconomic, and engineering evaluations and public comments.

An active public participation program will be pursued during the project. At the beginning of the study, an advertisement will be placed in local newspapers and the Pennsylvania Bulletin informing the public and public agencies of the study and soliciting names of individuals, organizations and agencies interested in participating in the study. A Citizens Advisory Committee will be formed and will meet regularly during the study. This committee will provide liaison between the Commonwealth of Pennsylvania and the local citizens, and participate in all aspects of the study. Public meetings will be held throughout the study to gather input to be used in the study and distribute information on the study. A Public Hearing will be held at the conclusion of the study to solicit comments from the public on alternatives presented. The Draft Environmental Impact Statement will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identifies, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the PennDOT or the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernment consultation on Federal programs and activities apply to this program.)

Issued on: February 22, 1991.

George L. Hannon,

Assistant Division Administrator, Harrisburg, PA.

[FR Doc. 91–4729 Filed 2–27–91; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Westmoreland, Armstrong, Butler, and Allegheny Counties, PA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in Westmoreland, Armstrong, Butler and Allegheny Counties, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Mr. John A. Gerner, District Engineer, Federal Highway Administration, 228 Walnut Street, P.O. Box 1086, Harrisburg, PA 17108–1086, Telephone: (717) 782–3411 or Mr. William W. Oshnack, Project Engineer, Pennsylvania Department of Transportation, North Gallatin Avenue Extension, P.O. Box 459, Uniontown, Pennsylvania 15401, Telephone: (412) 439–7321.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation (PennDOT), will prepare an Environmental Impact Statement (EIS) for the relocation of Traffic Route 356 (State Route 356, section B10), the Kiski Valley Expressway, in Westmoreland, Armstrong, Butler and Allegheny Counties, Pennsylvania.

The proposed action begins approximately 3 miles north of Vandergrift at the northern terminus of the existing Vandergrift Bypass (State Route 56) in Allegheny Township, Westmoreland County, and extends through Allegheny and Armstrong Counties to a terminus at the existing Allegheny Valley Expressway (State Route 28) near Freeport, in Buffalo Township, Butler County. The proposed action roughly parallels the Kiskiminetas River and is approximately 7 miles in length. The project is needed to complete a missing link and provide improved access from the Kiskiminetas (Kiski) Valley to Pittsburgh via State Route 28. Construction of the project would also stimulate industrial and economic development throughout the Kiski Valley.

An undetermined number of alternatives will be studied. These include four-lane expressway-type relocation on a new alignment, improvements to State Route 356 on the existing alignment, and the no-build alternative. All relocation alternatives will generally parallel State Route 356.

A two-phase approach will be used to develop the Environmental Impact Statement. The initial phase of project development will be identifying the Project Need. A Preliminary Alternatives Analysis will be prepared to evaluate whether all suggested alternatives satisfy the Project Need and to identify engineering and environmental constraints in the project study area. Public and agency coordination meetings will be held during the first phase to collect data and present the results of the Preliminary Alternatives Analysis. A Plan of Study for the Environmental Impact Statement will be prepared and circulated to Federal, State, and local agencies for those alternatives recommended as feasible by the Preliminary Alternatives Analysis.

The second phase of the study process will consist of analyzing the alternatives selected for detailed study. These alternatives will be the basis for the detailed environmental studies and the Environmental Impact Statement. From this analysis, a preferred alternative will be identified which best meets all project needs and traffic demands, and which satisfies public and agency comments.

An active public and agency participation program will be pursued during both phases of the project. Public meetings and agency coordination meetings will be held throughout the study process to gather data, distribute information, and receive comment on the results of all studies. A Public Hearing will be held at the conclusion of the study to solicit comments from the public on the alternatives presented. The Draft Environmental Impact Statement will be available for public and agency review and comment prior to the Public Hearing.

To ensure the full range of issues related to this proposed action are addressed and all significant issues are identified, comments or questions concerning this action and the environmental impact statement should be directed to the FHWA or PennDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: February 22, 1991.

George L. Hannon,

Assistant Division Administrator, Harrisburg, PA.

[FR Doc. 91–4730 Filed 2–27–91; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

Extension of Existing Approvals for the Use of Cargo Tanks, Portable Tanks, IM Portable Tanks, and Multi-Unit Tank Car Tanks in TOFC and COFC Service

AGENCY: Federal Railroad Administration, Office of Safety Enforcement, DOT.

ACTION: Notice extending existing approvals.

SUMMARY: This notice extends all FRA approvals granted for the transportation of cargo tanks, portable tanks, IM portable tanks, and multi-unit tank car tanks (multimodal tanks) in trailer-on-flat car (TOFC) and container-on-flatcar (COFC) service from March 1, 1991 until the issuance of a final rule in Docket HM–197. This action is necessary to allow the uninterrupted transportation of multimodal tanks in domestic rail transportation.

EFFECTIVE DATE: March 1, 1991.

FOR FURTHER INFORMATION CONTACT: Phil Olekszyk, (202) 366–0897, Office of Safety, 400 Seventh Street, SW., Washington, DC 20590. Office hours are 8:30 a.m. to 5 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The Hazardous Materials Regulations, at § 174.61(c), state:

> A cargo tank or a multi-unit tank car tank containing hazardous materials may not be transported in trailer-on-flatcar, or container-on-flatcar service except under conditions approved by the Federal Railroad Administrator.

The Regulations, at § 174.63(b), state:

> A specification 51, 52, 53, 56 or 57 portable tank may not be transported on flatcards or on flat trailers, except under conditions approved by the Federal Railroad Administrator.

At § 174.63(d), the Regulations state:

> An IM 101 or IM 102 portable tank: (1) May not be transported in container-on-flatcar service (COFC) except under conditions approved by the Associate Administrator for Safety, FRA; and (2) May not be transported in trailer-on-flatcar (TOFC) service except under conditions approved by the Associate Administrator for Safety, FRA.

When these sections were added to the regulations, the movement of hazardous materials by portable tank was not a major segment of that traffic and the IM portable tank had only recently appeared in significant numbers in domestic, import/export, and land-bridge movements. The Department decided that it needed to closely monitor the development of this

phase of hazardous materials traffic. Since that time, multi-modal transportation of hazardous materials has increased markedly and, on April 30, 1985, the Research and Special Programs Administration (RSPA) published an Advance Notice of Proposed Rulemaking, Docket HM–197, announcing that DOT was considering the development of safety standards for the use of cargo tanks, portable tanks, IM portable tanks, and multi-unit tank car tanks in TOFC and COFC service.

In Docket HM–197, RSPA mentioned that only a few approvals had been granted in previous years but that the number of requests was increasing. In fact, FRA has by now granted a large number of approvals for the movement of multimodal containers in TOFC and COFC service.

Virtually all of the previously granted approvals under 49 CFR 174.61 and 174.63 expire on March 1, 1991. This date was chosen because RSPA and FRA anticipated that it would allow sufficient time to bring Docket HM–197 to a conclusion. That did not happen, primarily because of the resource requirements of Docket HM–181, but a Notice of Proposed Rulemaking (NPRM) in Docket HM–197 is now in administrative review within RSPA and FRA. Because it is impossible to predict either the final contents of any rule which may be issued under Docket HM–197 or the date for any such issuance, FRA has decided to continue the effectiveness of those approvals previously issued and thereby allow the uninterrupted transportation of multimodal containers.

Accordingly, approvals issued by FRA under 49 CFR 174.61 and 174.63, for the movement of multimodal containers in TOFC and/or COFC service, are hereby extended pending the issuance of a final rule in Docket HM–197. FRA and RSPA anticipate that any final rule issued in Docket HM–197 will also contain further announcements about the status of previously issued approvals. These extensions are granted under the authority of 49 CFR 174.61 and 174.63, based on matters considered in the applications and requests previously received, and not as part of Docket HM–197, hence this matter is considered effective immediately. Nothing in this extension of previously granted approvals should be taken to predict the timing or outcome of Docket HM–197.

Authority 49 App. U.S.C. 1803, 1804, 1808; 49 CFR part 174.

Bruce Fine,

Acting Associate Administrator for Safety.

[FR Doc. 91–4649 Filed 2–27–91; 8:45 am]

BILLING CODE 4910–06–M

Urban Mass Transportation Administration

UMTA Section 3 and 9 Grant Obligations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1991, Public Law 101–516, signed into law by President George Bush on November 5, 1990, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the **Federal Register** every 30 days of grants obligated pursuant to sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Janet Lynn Sahaj, Chief, Resource Management Division, Office of Capital and Formula Assistance, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street, SW., room 9301, Washington, DC 20590, (202) 366–2053.

SUPPLEMENTARY INFORMATION: The Section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to the statute UMTA reports the following grant information:

SECTION 3 GRANTS

Transit property	Grant number	Grant amount	Obligation date
North San Diego County Transit Development Board San Diego, CA	CA–03–0354–00	$1,312,500	01/24/91
City & County of San Francisco, Public Utilities Commission, San Francisco-Oakland, CA	CA–03–0363–00	13,500,000	01/24/91
Chicago Transit Authority, Chicago, IL.-Nothwestern IN	IL–03–0155–00	28,916,250	01/29/91
East-West Gateway Coordinating Council, St. Louis, MO.-IL	MO–03–0031–00	450,000	01/22/91

SECTION 9 GRANTS

Transit property	Grant number	Grant amount	Obligation date
Long Beach Public Transportation Company, Los Angeles-Long Beach, CA	CA–90–X415–00	$5,495,000	01/03/91
City of Riverside, San Bernardino-Riverside, CA	CA–90–X417–00	105,600	01/03/91
San Mateo County Transit District, San Francisco-Oakland, CA	CA–90–X418–00	2,414,769	01/14/91
Central Contra Costa Transit Authority, San Francisco-Oakland, CA	CA–90–X425–00	2,222,852	01/03/91
Santa Clara County Transit District, San Jose, CA	CA–90–X426–00	12,621,998	01/03/91
Jefferson Parish, New Orleans, LA	LA–90–X111–00	4,152,868	01/24/91

Issued on: February 22, 1991.

Brian W. Clymer,

Administrator.

[FR Doc. 91-4699 Filed 2-27-91; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: February 20, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0003.
Form Number: SS-4 and SS-4PR.
Type of Review: Revision.
Title: Application for Employer Identification Number; Solicitud de Numero de Identification Patronal.
Description: Taxpayers required to have an identification number for use on any return, statement, or other document must prepare and file Form SS-4 or Form SS-4PR (Puerto Rico only) to obtain a number. The information is used by IRS and SSA in tax administration and by the Bureau of the Census for business statistics.
Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 2,112,737.
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping—7 minutes.
Learning about the law or the form—21 minutes.
Preparing the form—45 minutes.
Copying, assembling, and sending the form to IRS—20 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping/ Reporting Burden: 3,274,794 hours.
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91-4733 Filed 2-27-91; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: February 20, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 95-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0015.
Form Number: CF 7511.
Type of Review: Reinstatement.
Title: Notice of Exportation of Articles With Benefit of Drawback.
Description: The CF 7511 is used by commercial exporters and manufacturers upon the export of shipments of merchandise on which drawback is to be claimed.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 1,000.
Estimated Burden Hours Per Response/ Recordkeeping: 6 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping/ Reporting Burden: 33,000 hours.

OMB Number: 1515-0077.
Form Number: CF 7514.
Type of Review: Reinstatement.
Title: Drawback Notice (Lading/Foreign Trade Zone Transfer).
Description: The form is used by drawback liquidators to determine that a drawback claimant has received supplies (normally oil) for use in operating the vessels or aircraft and therefore is entitled to drawback of thse supplies or that articles were properly transferred to a foreign trade zone rather than being exported.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Response/ Recordkeeping: 10 minutes.
Frequency of Response: On occasion
Estimated Total Recordkeeping/ Reporting Burden: 10,335 hours.
Clearance Officer: Ralph Meyer, (202) 343-0044, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91-4734 Filed 2-27-91; 8:45 am]

BILLING CODE 4820-02-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: February 22, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1076.
Form Number: 8807.
Type of Review: Revision.
Title: Computation of Certain Manufacturers and Retailers Excise Taxes.
Description: Form 8807 is used to compute the excise tax on fishing equipment, bows and arrows, trucks and trailer chassis and bodies and tractors and the luxury tax on aircraft, boats, passenger vehicles, furs, and jewelry. This form enables IRS to monitor the excise tax liability on these articles. (Internal Revenue Code sections 4161, 4051, 4003, 4002, 4001, 4007, and 4006.)
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 46,750.
Estimated Burden Hours Per Response/ Recordkeeping:

Form	Recordkeeping	Learning about the law or the form	Preparing and sending the form to IRS
8807 Pt. 1	3 hrs., 7 mins	6 mins	9 mins.
8807 Pt. 2	2 hrs., 38 mins	6 mins	9 mins.
8807 Wksht. 1	1 hr., 40 mins		2 mins.
8807 Wksht. 2	1 hr., 55 mins		2 mins.

Frequency of Response: Quarterly.
Estimated Total Recordkeeping/ Reporting Burden: 827,360 hours.
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91–4735 Filed 2–27–91; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: February 21, 1991.

The Department of Treasury has submitted the following public information collection requirements(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Office listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Departmental Offices

OMB Number: 1505–0121.
Form Number: None.
Type of Review: Extension.
Title: Regulations Pertaining to Mergers, Acquisitions, and Takeovers by Foreign Persons.
Description: Treasury will disseminate this information to seven other agencies which are members of the Committee on Foreign Investment in the United States to enable the Committee to review and/or investigate certain acquisitions for their possible impact on the national security. Respondents are companies in the United States or abroad.
Respondents: Individuals or households, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small Businesses or organizations.
Estimated Number of Respondents: 1.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1 hour.
Clearance Officer: Lois K. Holland, (202) 566–6579, Departmental Offices, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91–4736 Filed 2–27–91; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: February 21, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–1002.
Form Number: 8621.
Type of Review: Extension.
Title: Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.
Description: Form 8621 is filed by a U.S. person who owns stock in a foreign investment company. The form is used to report income, make an election to extend the time for payment of tax, and to pay an additional tax and interest amount. IRS uses Form 8621 to determine if these shareholders have correctly reported amounts of income, made the election correctly, and have correctly computed the additional tax and interest amount.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents: 7,000.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping—11 hours, 58 minutes.
Learning about the law or the form—1 hour, 41 minutes.
Preparing and sending the form to IRS—1 hour, 58 minutes.
Frequency of Response: Annually.
Estimated Total Recordkeeping/ Reporting Burden: 109,200 hours.
Clearance officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224..
OMB Reviewer: Milo Sunderhauf, (202) 395–6380, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91–4737 Filed 2–27–91; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: February 22, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearing Officer, Department of the Treasury, Room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0140.
Form Number: None.
Type of Review: Extension.
Title: Textiles and Textile Products.
Description: Information is needed by Customs to be able to identify the country of origin of textiles. The requirement prevents circumvention of bilateral agreements and insures the proper assessment of duties. The declaration will be executed by the foreign manufacturer, exporter or U.S. importer to be filed with entry.
Respondents: Businesses or other for-profit, Small business or organizations.
Estimated Number of Respondents: 44,476.
Estimated Burden Hours Per Response: 7 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 129,691 hours.
Clearance Officer: Ralph Meyer, (202) 343–0044, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91–4738 Filed 2–27–91; 8:45 am]

BILLING CODE 4820–02–M

Office of Thrift Supervision

FarWest Savings and Loan Association, F.A., Newport Beach, CA; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for FarWest Savings and Loan Association, F.A., Newport Beach, California, on February 15, 1991.

Dated: February 22, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–4670 Filed 2–27–91; 8:45 am]

BILLING CODE 6720–01–M

FarWest Savings and Loan Association, Newport Beach, CA; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for FarWest Savings and Loan Association, Newport Beach, California OTS No. 1314, on February 15, 1991.

Dated: February 22, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–4671 Filed 2–27–91; 8:45 am]

BILLING CODE 6720–01–M

Mid Kansas Savings and Loan Association, F.A.; Replacement of Conservator With Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of Section 5 (d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Mid Kansas Savings and Loan Association, F.A., Wichita, Kansas ("Association") with the Resolution Trust Corporation as sole Receiver for the Association on February 15, 1991.

Dated: February 22, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–4672 Filed 2–27–91; 8:45 am]

BILLING CODE 6720–01–M

Pima Federal Savings and Loan Association; Replacement of Conservator With Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of Section 5 (d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Pima Federal Savings and Loan Association, Tucson, Arizona with the Resolution Trust Corporation as sole Receiver for the Association on February 15, 1991.

Dated: February 22, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–4673 Filed 2–27–91; 8:45 am]

BILLING CODE 6720–01–M

Security Federal Savings, FSB; Replacement of Conservator With Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of Section 5 (d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Security Federal Savings, FSB, Columbia, South Carolina, with the Resolution Trust Corporation as sole Receiver for the Association on February 15, 1991.

Dated: February 22, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–4674 Filed 2–27–91; 8:45 am]

BILLING CODE 6720–01–M

[AC–4; OTS No. 8487]

Monumental Savings Bank, F.S.B., Baltimore, MD; Final Action; Approval of Conversion Application

Notice is hereby given that on January 31, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of Monumental Savings Bank, F.S.B., Baltimore, Maryland, for permission to convert to the stock form or organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision of Atlanta, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

Dated: February 20, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–4675 Filed 2–27–91; 8:45 am]

BILLING CODE 6720–01–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 40
Thursday, February 28, 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).

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., March 6, 1991.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, DC 20573–0001.

STATUS: Closed.

MATTER(S) TO BE CONSIDERED:
1. Japan Harbor Management Fund.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 91–4963 Filed 2–26–91; 3:37 pm]

BILLING CODE 6730–01–M

Corrections

Federal Register
Vol. 56, No. 40
Thursday, February 28, 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 HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86N-0141; DESI 12708]

Diutensen Tablets; Withdrawal of Approval of New Drug Application; Amendment

Correction

In notice document 91-3741 beginning on page 6402 in the issue of Friday, February 15, 1991, make the following correction:

On page 6403, in the first column, in the second line from the top, "DNA 12-708" should read "NDA 12-708".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-930-4214-11; MTM 014987, MTM 060295, MTM 069190, and MTM 20087]

Proposed Continuation of Withdrawals; Montana

Correction

In notice document 91-3020 beginning on page 5232 in the issue of Friday, February 8, 1991, make the following corrections:

1. On page 5233, in the first column, in the land description for **Principal Meridian Lolo National Forest:**

a. Under Big Horn Recreation Area, in Sec. 6, in the second line, remove the comma after "S½".

b. Under Harry's Flat Camp, in Sec. 16, in the second line, remove the hyphen after "SW¼".

c. Under Norton Picnic Site, in Sec. 25, in the second line, insert a comma after "HES 52".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

[GN90-3 ADM-9-03:C:R:C 088249 ALS]

Further Dissemination of Existing Information Product

Correction

In notice document 91-3834 beginning on page 6707 in the issue of Tuesday, February 19, 1991, make the following correction:

On page 6707, in the third column, in the first full paragraph, in the eighth line from the bottom of the paragraph, "unfurnished" should read "furnished".

BILLING CODE 1505-01-D

federal register

Thursday
February 28, 1991

Part II

Environmental Protection Agency

Asbestos-Containing Materials in Schools: EPA-Approved Courses; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-62102; FRL-3877-7]

Asbestos-Containing Materials in Schools; EPA-Approved Courses Under the Asbestos Hazard Emergency Response Act (AHERA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 206(c)(3) of the Toxic Substances Control Act (TSCA) directs the EPA Administrator to publish (and revise as necessary) a list of EPA-approved asbestos courses and tests which are consistent with the Agency's Model Accreditation Plan required under section 206(b) of TSCA. Also required is a list of those courses and tests which had qualified for equivalency treatment for interim accreditation during the time period established by Congress in AHERA. Effective July 1990, that time period has expired in all States. All courses approved for interim accreditation have therefore been included in this list for information purposes only.

Section 206(f) of TSCA Title II requires the Administrator to publish quarterly in the **Federal Register**, beginning August 31, 1988, and ending August 31, 1991, a list of EPA-approved asbestos training courses. Accordingly, this **Federal Register** notice presents the fourteenth cumulative listing of EPA-approved courses and also includes a list of State accreditation programs that EPA has approved as meeting the requirements of the Model Plan.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, Telephone: (202) 382-3949, TDD: (204) 554-0551.

SUPPLEMENTARY INFORMATION: Section 206 of Title II of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2646, required EPA to develop a Model Accreditation Plan by April 20, 1987. The Plan was issued on April 20, 1987, and was published in the **Federal Register** of April 30, 1987 (52 FR 15875), as appendix C to subpart E, 40 CFR part 763. Persons must receive accreditation in order to inspect school buildings for asbestos, develop school asbestos management plans, and design or conduct school asbestos response actions. Such persons can be accredited by States, which are required under Title II to adopt contractor accreditation plans at least as stringent as the EPA Model Plan, or by completing an EPA-approved training course and passing an examination for such course. The EPA Model Accreditation Plan establishes those areas of knowledge of asbestos inspection, management plan development, and response action technology that persons seeking accreditation must demonstrate and States must include in their accreditation programs.

In the **Federal Register** of October 30, 1987 (52 FR 41826), EPA promulgated a final "Asbestos-Containing Materials In Schools" rule (40 CFR part 763, subpart E) which required all local education agencies (LEAs) to identify asbestos-containing materials (ACM) in their school buildings and take appropriate actions to control the release of asbestos fibers. The LEAs are also required to describe their activities in management plans, which must be made available to the public and submitted to State governors. Under Title II, LEAs are required to use specially trained persons to conduct inspections for asbestos, develop the management plans, and design or conduct major actions to control asbestos. The rule took effect on December 14, 1987.

The length of initial training courses for accreditation under the Model Plan varies by discipline. Briefly, inspectors must take a 3-day training course; management planners must take the inspection course plus an additional 2 days devoted to management planning; and abatement project designers are required to have at least 3 days of training. In addition, asbestos abatement contractors and supervisors must take a 4-day training course and asbestos abatement workers are required to take a 3-day training course. For all disciplines, persons seeking accreditation must also pass an examination and participate in annual re-training courses. A complete description of accreditation requirements can be found in the Model Accreditation Plan at 40 CFR part 763, subpart E, appendix C.I.1.A through E.

In Section 206(c)(3) of Title II, and as amended by section 206(f), the Administrator, in consultation with affected organizations, is directed to publish quarterly a list of asbestos courses and tests in effect before the date of enactment of this title which qualified for equivalency treatment for interim accreditation purposes, and a list of EPA-approved asbestos courses and tests which the Administrator has determined are consistent with the Model Plan and which qualify a contractor for accreditation.

This quarterly notice formerly included a list of laboratories accredited by the National Institute of Standards and Technology (NIST) for the polarized light microscopy (PLM) analysis of bulk materials for asbestos. The EPA is no longer publishing this laboratory list because it is now available from the NIST National Voluntary Laboratory Accreditation Program (NVLAP). Persons wishing to obtain current information on the accreditation of asbestos laboratories in general or the accreditation status of any particular laboratory should contact NIST directly for this information by: (1) Writing to: Chief, Laboratory Accreditation Program, National Institute of Standards and Technology, Bldg. 411, Rm. A124, Gaithersburg, MD 20899 (please include a self-addressed mailing label); (2) computer-to-computer communication with the NVLAP electronic bulletin board on 301-948-2058; (3) Fax on 301-975-3839; or (4) calling NVLAP on 301-975-4016. EPA interim approval for laboratories ended October 30, 1989, and since that date laboratory asbestos accreditation has been administered by NIST through the NVLAP.

The **Federal Register** notice of October 30, 1987, included EPA's initial list of course approvals. In addition, the initial list also included those State accreditation programs that EPA had approved as meeting the requirements of the Model Plan. The second **Federal Register** notice of February 10, 1988 (53 FR 3982), the third **Federal Register** notice of June 1, 1988 (53 FR 20066), the fourth **Federal Register** notice of August 31, 1988 (53 FR 33574), the fifth **Federal Register** notice of November 30, 1988 (53 FR 48424), the sixth **Federal Register** notice of February 28, 1989 (54 FR 8438), the seventh **Federal Register** notice of May 31, 1989 (54 FR 23392), the eighth **Federal Register** notice of August 31, 1989 (54 FR 36166), the ninth **Federal Register** notice of November 29, 1989 (54 FR 49190), the tenth **Federal Register** notice of February 28, 1990 (55 FR 7202), the eleventh **Federal Register** notice of May 31, 1990 (55 FR 22176), the twelfth **Federal Register** notice of August 31, 1990 (55 FR 35760), and the thirteenth **Federal Register** notice of November 30, 1990 (55 FR 49756), were subsequent listings of cumulative EPA course approvals and EPA-approved State accreditation programs.

This **Federal Register** notice is divided into four units. Unit I discusses EPA approval of State accreditation programs. Unit II covers EPA approval of training courses. Unit III discusses the AHERA-imposed deadline for persons with interim accreditation. Unit IV

provides the list of State accreditation programs and training courses approved by EPA as of January 8, 1991. Subsequent **Federal Register** notices will add other State programs as they are approved.

As announced in the **Federal Register** of September 20, 1989, EPA is no longer accepting for review and contingent approval training courses for AHERA accreditation after October 15, 1989. However, a course's status may change after that cut-off date. For example, a contingently approved course may become fully approved and a course with full approval may become disapproved. As mentioned in the September 1989 **Federal Register** notice, EPA has said it would continue to conduct full approval audits of courses that already have received contingent approval and review for contingent approval and subsequent full approval, courses received by EPA which had been postmarked on or before October 15, 1989. EPA may reach agreements with States that do not currently have an accreditation program, to turn over responsibility for auditing courses with contingent and full approval, as these States develop accreditation programs.

I. EPA Approval of State Accreditation Programs

As discussed in the Model Plan, EPA may approve State accreditation programs that the Agency determines are at least as stringent as the Model Plan. In addition, the Agency is able to approve individual disciplines within a State's accreditation program. For example, a State that currently only has an accreditation requirement for inspectors can receive EPA approval for that discipline immediately, rather than waiting to develop accreditation requirements for all disciplines in the Model Plan before seeking EPA approval.

As listed in Unit IV, Alabama, Alaska, Arkansas, Colorado, Delaware, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Jersey, New York, North Dakota, Oregon, Rhode Island, South Dakota, Utah, Virginia, Washington, and Wisconsin have received EPA full approval for two accreditation disciplines, abatement workers as well as contractors and supervisors, that are at least as stringent as the Model Plan. In addition, the States of Alabama, Colorado, Illinois, Indiana, Iowa, Maine, Massachusetts, Michigan, Montana, Nebraska, New York, North Dakota, Rhode Island, South Dakota, Utah, Virginia, and Wisconsin have received full approval for their inspector/management planner and project designer disciplines. Any training courses in those disciplines approved by the aforementioned States are EPA-approved courses for purposes of accreditation. These training courses are EPA-approved courses for purposes of TSCA Title II in these States and in all States without an EPA-approved accreditation program for the discipline. Current lists of training courses approved by Alaska, Arkansas, Colorado, Delaware, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Jersey, New York, North Dakota, Oregon, Rhode Island, South Dakota, Utah, Virginia, Washington, and Wisconsin are listed under Unit IV. Alabama and Indiana do not have separate provider listings since these States have not independently approved any additional courses.

Each State accreditation program may have different requirements. For example, New Jersey requires participants of its courses to take the State exam. Therefore, those New Jersey-approved course sponsors who want to provide training in another State must develop their own examination. They must also submit for EPA approval to the Regional Asbestos Coordinator in their Region, a detailed statement about the development of the course examination as required by the Model Plan.

II. EPA Approval of Training Courses

A cumulative list of training courses approved by EPA is included under Unit IV. The examinations for these approved courses under Unit IV have also been approved by EPA. EPA has three categories of course approval: full, contingent, and approved for interim accreditation. As noted in Unit III, interim accreditation is no longer in effect as of July 1990. Each course that had been approved for interim accreditation will show inclusive dates of this approval. EPA's deadlines for interim accreditation are discussed further in Unit III.

Full approval means EPA has reviewed and found acceptable the course's written submission seeking EPA approval and has conducted an on-site audit and determined that the training course meets or exceeds the Model Plan's training requirements for the relevant discipline.

Contingent approval means the Agency has reviewed the course's written submission seeking EPA approval and found the material to be acceptable (i.e., the written course materials meet or exceed the Model Plan's training course requirements). However, EPA has not yet conducted an on-site audit.

Successful completion of either a fully approved course or a contingently approved course provides full accreditation for course attendees. If EPA subsequently audits a contingently approved course and withdraws approval due to deficiencies discovered during the audit, future course offerings would no longer have EPA approval. However, withdrawal of EPA approval would not affect the accreditation of persons who took previously offered training courses, including the course audited by EPA.

Thus far, EPA has taken formal action to revoke or suspend course approvals in two instances. EPA revoked approval from Living Word College's inspector and management planner training courses offered after May 6, 1988. Living Word College is located in EPA Region VII. In addition, EPA has suspended approval from the Safety Management Institute's training courses and refresher courses for workers, inspectors/management planners, and contractors/supervisors. The effective date for the course suspensions is the first week of October 1989. Safety Management Institute is located in EPA Region III. Certain EPA-approved State programs have also taken actions to suspend or revoke courses within their jurisdictions.

EPA-approved training courses listed under Unit IV are approved on a national basis. EPA has organized Unit IV by EPA Region to assist the public in locating those training courses that are offered nearby. Training courses are listed in the Region where the training course is headquartered. Although several sponsors offer their courses in various locations throughout the United States, a large number of course sponsors provide most of their training within their own Region.

State accreditation programs may have more stringent requirements than does the Model Plan. As a result, some EPA-approved training courses listed under Unit IV may not meet the requirements of a particular State's accreditation program. Sponsors of training courses and persons who have received accreditation should contact individual States to check on accreditation requirements.

A number of training courses offered before EPA issued the Model Plan equaled or exceeded the subsequently issued Model Plan's training course requirements. These courses are listed under Unit IV as being approved. It should be noted that the persons who have successfully completed these

courses are fully accredited; they are not only accredited on an interim basis.

III. Phase out of Interim Accreditation.

TSCA Title II allowed EPA to accredit persons on an interim basis if they had attended EPA-approved asbestos training before the effective date of the AHERA regulation and passed an asbestos exam. As a result, the Agency approved, on an interim basis, a number of training courses which had been offered prior to the effective date of the AHERA regulation. Only those persons who had taken training courses equivalent to the Model Plan's requirements between January 1, 1985, and December 14, 1987, were considered accredited under these interim provisions. Equivalent means that the courses had to be essentially similar in length and content to the curriculum found in the Model Plan. In addition, an examination had to be essentially equivalent to the examination requirements found in the Model Plan. If no examination was offered at the time, course providers seeking interim approval needed to provide an examination.

Persons who took one of the EPA-approved courses for interim accreditation, and could produce evidence that they had successfully completed the course by passing an examination, were accredited on an interim basis. This accreditation was interim since the person was considered accredited for only 1 year after the date on which the State where the person was employed was required to have established an accreditation program at least as stringent as the EPA Model Plan. TSCA Title II requires States to adopt a contractor accreditation program at least as stringent as the Model Plan within 180 days after the first regular session of the State's legislature convened following the date EPA issued the Model Plan.

The deadline for all States to establish a complete accreditation program was July 1989. In fact, most States were required to have developed a program by July 1988. As a result, after July 1989, the period of interim accreditation expired for persons in all States but Arkansas, Montana, Nevada, North Carolina, Oregon, Pennsylvania, and Texas. In these seven States, the legislatures meet on a bi-annual basis and last met in January 1989; therefore, persons in these States with interim accreditation lost their interim status in these States after July 1990. Because interim accreditation has now expired in all States, anyone who had previously received interim accreditation is no longer eligible to perform AHERA work unless he or she has subsequently acquired AHERA accreditation by completing an approved course. To receive accreditation, such persons, if they have not already done so, must complete an EPA-approved course or a State course under a State plan at least as stringent as the EPA Model Plan. For example, a person who had interim accreditation as a supervisor would have to take a 4–day supervisor course approved by EPA or an EPA-approved State program to become fully accredited.

IV. List of EPA-Approved State Accreditation Programs and Training Courses

The fourteenth cumulative listing of EPA-approved State accreditation programs and training courses follows. As discussed above, quarterly notifications of EPA approval of State accreditation programs and EPA approval of training courses will be published in subsequent **Federal Register** notices. The closing date for the acceptance of submissions to EPA for inclusion in this fourteenth notice was January 8, 1991. Omission from this list does not imply disapproval by EPA, nor does the order of the courses reflect priority or quality. The format of the notification lists first the State accreditation programs approved by EPA, followed by EPA-approved training courses listed by Region. The name, address, phone number, and contact person is provided for each training provider followed by the courses and type of course approval (i.e., full, contingent, or for interim purposes).

As of January 8, 1991, a total of 595 training providers are offering 1,167 EPA-approved training courses for accreditation under TSCA Title II. There are 504 asbestos abatement worker courses, 394 contractor/supervisor courses, 208 inspector/management planner courses, 18 inspector-only courses, and 45 project designer courses. In addition, EPA has approved 763 refresher courses.

Twenty-five States currently have EPA-approved State accreditation programs in one or more disciplines. These State programs have approved a total of 803 courses, including 424 worker courses, 265 contractor/supervisor courses, 26 inspector-only courses, 63 inspector/management planner courses and 25 project designer courses. In addition, these state programs have approved 528 refresher courses. It should be noted that certain training course providers may have course approval in more than one State; therefore, there may be some double-counting of these courses reflected in the above numbers.

An EPA-funded model course for inspectors and management planners is available for use by training providers. In addition, an earlier EPA-developed course for asbestos abatement contractors and supervisors has now been revised and is also available. EPA is also announcing that its newly developed model worker course is now available as well. A fee for each course will be charged to cover the reproduction and shipping costs for the written and visual aid materials. Interested parties should contact the following firm to receive copies of the training courses: ATLIS Federal Services, Inc., EPA AHERA Program, 6011 Executive Blvd., Rockville, MD 20852, Phone number: (301) 468–1916.

The following is the cumulative list of EPA-approved State accreditation programs and training courses:

Approved State Accreditation Programs

Alabama

(1)(a) *State Agency:* Alabama Safe State Program, Address: Box 870388, Tuscaloosa, AL 35487-0388, Contact: George Wade, Phone: (205) 348-7136.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 11/13/90).
Contractor/Supervisor (full from 11/13/90).
Inspector (full from 11/13/90).
Inspector/Management Planner (full from 11/13/90).
Project Designer (full from 11/13/90).

Alaska

(2)(a) *State Agency:* Department of Labor, Address: P.O. Box 1149, Juneau, AK 99802, Contact: Richard Arab, Phone: (907) 465-4856.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (interim from 10/1/85).
Abatement Worker (full from 1/29/90).
Contractor/Supervisor (interim from 10/1/85).
Contractor/Supervisor (full from 1/29/90).

(i)(a) *Training Provider:* Alaska Laborers Training School.

Address: 13500 Old Seward Highway, Anchorage, AK 99515, Contact: Leslie Lauinger, Phone: (907) 345-3853.

(b) *Approved Courses:*

Abatement Worker (Certified 11/1/89).
Contractor/Supervisor (Certified 11/1/89).

(ii)(a) *Training Provider:* Alaska Quality Control & Technical Service, Ltd.

Address: 907 E. Dowling Rd., Suite 18, Anchorage, AK 99518, Contact: Gracita O. Torrijos, Phone: (907) 561-2400.

(b) *Approved Courses:*

Abatement Worker (Certified 5/1/90).
Contractor/Supervisor (Certified 5/1/90).

(iii)(a) *Training Provider:* Arctic Slope Consulting Group, Inc.

Address: 6700 Arctic Spur Rd., Anchorage, AK 99518-1550, Contact: Tom Tessier, Phone: (907) 349-5148.

(b) *Approved Courses:*

Abatement Worker (Certified 12/1/89).
Contractor/Supervisor (Certified 12/1/89).

(iv)(a) *Training Provider:* Asbestos Removal Specialists of Alaska.

Address: 1896 Marika Rd., Unit No. 3, Fairbanks, AK 99709, Contact: J. J. Middleton, Phone: (907) 451-8555.

(b) *Approved Courses:*

Abatement Worker (Certified 5/1/89).
Contractor/Supervisor (Certified 5/1/89).

(v)(a) *Training ProviderT1Central & Southeastern Alaska District Council of Carpenters.*

Address: 100 W. International Airport Rd., No. 102, Anchorage, AK 99518, Contact: William Matthews, Phone: (907) 561-4568.

(b) *Approved Courses:*

Abatement Worker (Certified 2/1/89).
Contractor/Supervisor (Certified 2/1/89).

(vi)(a) *Training Provider:* Environmental Management, Inc.

Address: P.O. Box 91477, Anchorage, AK 99509, Contact: Kenneth D. Johnson, Phone: (907) 272-8056.

(b) *Approved Courses:*

Abatement Worker (Certified 6/1/89).
Contractor/Supervisor (Certified 6/1/89).

(vii)(a) *Training Provider:* Environmental Science & Engineer, Inc.

Address: 1205 E. International Airport Rd., Suite 100, Anchorage, AK 99518-1409, Contact: Robert Morgan, Phone: (907) 561-3055.

(b) *Approved Courses:*

Abatement Worker (Certified 6/1/90).
Contractor/Supervisor (Certified 6/1/90).

(viii)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers.

Address: 407 Denali St., Suite 303, Anchorage, AK 99501, Contact: Dan Middaugh, Phone: (907) 272-8224.

(b) *Approved Courses:*

Abatement Worker (Certified 8/1/89).
Contractor/Supervisor (Certified 8/1/89).

(ix)(a) *Training Provider:* Martech Construction Co.

Address: 300 E. 54th Ave., Anchorage, AK 99518, Contact: Gary Lawley, Phone: (907) 561-1970.

(b) *Approved Courses:*

Abatement Worker (Certified 9/1/89).
Contractor/Supervisor (Certified 9/1/89).

(x)(a) *Training Provider:* Sheet Metal Worker Int'l. Association Local 23.

Address: 1818 W. Northern Lights Blvd. No. 100, Anchorage, AK 99517, Contact: Randall E. Pysher, Phone: (907) 277-5313.

(b) *Approved Courses:*

Abatement Worker (Certified 1/1/90).
Contractor/Supervisor (Certified 1/1/90).

(xi)(a) *Training Provider:* University of Alaska Mining & Petroleum Training Services.

Address: 155 Smith Way, Suite 104, Soldotna, AK 99669, Contact: Dennis Steffy, Phone: (907) 262-2788.

(b) *Approved Courses:*

Abatement Worker (Certified 4/1/89).
Contractor/Supervisor (Certified 4/1/89).

Arkansas

(3)(a) *State Agency:* Arkansas Dept. of Pollution Control and Ecology, Address: 8001 National Dr., P.O. Box 9583, Little Rock, AR 72209, Contact: Wilson Tolefree, Phone: (501) 562-7444.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (interim from 11/22/85).
Abatement Worker (full from 1/22/88).
Contractor/Supervisor (interim from 11/22/85).
Contractor/Supervisor (full from 1/22/88).

(i)(a) *Training Provider:* American Specialty Contractors.

Address: P.O. Box 66375, Baton Rouge, LA 70896, Contact: Daniel L. Anderson, Phone: (504) 926-9624.

(b) *Approved Courses:*

Abatement Worker (Certified 2/13/90).
Contractor/Supervisor (Certified 2/13/90).

(ii)(a) *Training Provider:* Arkansas Laborers Training Fund.

Address: 4501 West 61st St., Little Rock, AR 72209, Contact: W. Rudy Osborne, Phone: (501) 562-5502.

(b) *Approved Course:*

Abatement Worker (Certified 5/2/88).

(iii)(a) *Training Provider:* Asbestos Training & Employment, Inc.

Address: 809 East 11th St., Michigan City, IN 46360, Contact: Bruce H. Connell, Phone: (219) 874-7348.

(b) *Approved Courses:*

Abatement Worker (Certified 5/18/88).
Contractor/Supervisor (Certified 5/18/88).

(iv)(a) *Training Provider:* Critical Environmental Training, Inc.

Address: 5815 Gulf Freeway, Houston, TX 77023, Contact: Charles M. Flanders, Phone: (713) 921-8921.

(b) *Approved Courses:*

Abatement Worker (Certified 9/12/88 to 12/20/90 **only**).
Contractor/Supervisor (Certified 9/12/88 to 12/20/90 **only**).

(v)(a) *Training Provider:* Enviro Sciences, Inc.

Address: 3810 F Merton Dr., Raleigh, NC 27609, Contact: Chester Hudlow, Phone: (919) 782-1487.

(b) *Approved Courses:*

Abatement Worker (Certified 6/6/90).
Abatement Worker Annual Review (Certified 8/21/90).
Contractor/Supervisor (Certified 7/31/90).
Contractor/Supervisor Annual Review (Certified 8/21/90).

(vi)(a) *Training Provider:* Environmental Institute.

Address: 350 Franklin Rd., Suite 300, Marietta, GA 30067, Contact: Eva Clay, Phone: (404) 425-2000.

(b) *Approved Course:*

Contractor/Supervisor (Certified 10/7/88).

(vii)(a) *Training Provider:* Environmental Technologies.

Address: P.O. Box 21243, Little Rock, AR 72221, Contact: Phyllis Moore, Phone: (501) 569-3518.

(b) *Approved Courses:*

Abatement Worker (Certified 3/16/88).
Abatement Worker Annual Review (Certified 3/30/89).
Contractor/Supervisor (Certified 3/16/88).
Contractor/Supervisor Annual Review (Certified 3/30/89).

(viii)(a) *Training Provider:* Hall-Kimbrell Environmental Services.

Address: P.O. Box 307, Lawrence, KS 66044, Contact: Patrick Shrepf, Phone: (913) 749-2381.

(b) *Approved Courses:*

Abatement Worker (Certified 6/8/88).
Contractor/Supervisor (Certified 6/8/88).

(ix)(a) *Training Provider:* ICU, Inc.
Address: P.O. Box 2896, Farmington, NM 87499, Contact: Sharon Adams, Phone: (505) 326-0472.
(b) *Approved Courses:*
Abatement Worker (Certified 10/8/90).
Contractor/Supervisor (Certified 10/8/90).
(x)(a) *Training Provider:* Labor Education Program, University of Arkansas.
Address: 2801 S. University Ave., Little Rock, AR 72204, Contact: Bernica Tackett, Phone: (501) 562-7444.
(b) *Approved Course:*
Abatement Worker (Certified 12/12/89).
(xi)(a) *Training Provider:* Meta Inc.
Address: P.O. Box 786, Lawrence, KS 66044, Contact: Karen P. Wilson, Phone: (913) 491-0181.
(b) *Approved Courses:*
Abatement Worker (Certified 3/27/90).
Abatement Worker Annual Review (Certified 3/27/90).
Contractor/Supervisor (Certified 3/27/90).
Contractor/Supervisor Annual Review (Certified 3/27/90).
(xii)(a) *Training Provider:* National Asbestos Training Center, University of Kansas.
Address: 6600 College Blvd., Suite 315, Overland Park, KS 66211, Contact: Lani Himegarner, Phone: (913) 491-0221.
(b) *Approved Courses:*
Contractor/Supervisor (Certified 3/30/90).
Contractor/Supervisor Annual Review (Certified 3/30/90).
(xiii)(a) *Training Provider:* Professional Asbestos Training Service.
Address: P.O. Box 19092, Little Rock, AR 72219, Contact: Harold Lewis, Phone: (501) 562-1519.
(b) *Approved Courses:*
Abatement Worker (Certified 4/18/88).
Abatement Worker Annual Review (Certified 1/4/90).
Contractor/Supervisor (Certified 4/18/88).
Contractor/Supervisor Annual Review (Certified 1/4/90).
(xiv)(a) *Training Provider:* University of Arkansas.
Address: 521 South Razorback Rd., Fayettville, AR 72701, Contact: Greg Weeks, Phone: (501) 575-6175.
(b) *Approved Course:*
Abatement Worker (Certified 10/7/88).
(xv)(a) *Training Provider:* Wellington House.
Address: 120 West State St., High Point, NC 27262, Contact: R. Donald Phillips, Phone: (919) 883-3722.
(b) *Approved Courses:*
Abatement Worker (Certified 6/6/90).
Contractor/Supervisor (Certified 6/6/90).

Colorado

(4)(a) *State Agency:* Colorado Dept. of Health, Address: 4210 East 11th Ave., Denver, CO 80220, Contact: David R. Ouimette, Phone: (303) 320-8333.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 7/8/89).
Contractor/Supervisor (full from 7/8/89).
Inspector/Management Planner (full from 7/8/89).
Project Designer (full from 7/8/89).
(i)(a) *Training Provider:* Air Technology & Associates.
Address: 724 Oil Hill Rd., P.O. Box 23, El Dorado, KS 67042, Contact: Richard Green, Phone: (913) 841-1193.
(b) *Approved Courses:*
Abatement Worker (Certification Pending).
Abatement Worker Annual Review (Certification Pending).
Contractor/Supervisor (Certification Pending).
Contractor/Supervisor Annual Review (Certification Pending).
(ii)(a) *Training Provider:* Haz - Cure International.
Address: 1555 Simms St., Lakewood, CO 80215, Contact: Edmund C. Garthe, Phone: (303) 232-3174.
(b) *Approved Courses:*
Abatement Worker (Certification Pending).
Abatement Worker Annual Review (Certification Pending).
Contractor/Supervisor (Certification Pending).
Contractor/Supervisor Annual Review (Certification Pending).
(iii)(a) *Training Provider:* Precision Safety and Services Inc.
Address: 1245 Windemaker Lane, Colorado Springs, CO 80907, Contact: James R. Mapes, Jr., Phone: (719) 593-8596.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certification Pending).
Contractor/Supervisor (Certification Pending).
Contractor/Supervisor Annual Review (Certification Pending).
(iv)(a) *Training Provider:* QA Training & Inspection Services.
Address: 1405 Krameria St., Suite 4-D, Denver, CO 80220, Contact: Garrett Fleming, Phone: (303) 388-7388.
(b) *Approved Courses:*
Abatement Worker (Certification Pending).
Abatement Worker Annual Review (Certification Pending).
Contractor/Supervisor (Certification Pending).
Contractor/Supervisor Annual Review (Certification Pending).
(v)(a) *Training Provider:* The Environmental Training Center.
Address: 2781 West Oxford Ave. Unit No.7, Englewood, CO 80110, Contact: Harvey Lindenberg, Phone: (303) 781-0422.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certification Pending).
Contractor/Supervisor Annual Review (Certification Pending).
Inspector/Management Planner (Certification Pending).
Inspector/Management Planner Annual Review (Certification Pending).
(vi)(a) *Training Provider:* U.S. Army Environmental Hygiene Activity - West.
Address: Fitzsimons Army Medical Center, Aurora, CO 80045-5001, Contact: Wendell C. King, Phone: (303) 361-8881.
(b) *Approved Courses:*
Abatement Worker (Certified 12/20/89).
Contractor/Supervisor (Certified 12/20/89).

Delaware

(5)(a) *State Agency:* Delaware Dept. of Administrative Services, Address: Short Building, 21 The Green, P.O. Box 1401, Dover, DE 19903, Contact: Robert Foster, Phone: (302) 739-3930.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 8/14/89).
Contractor/Supervisor (full from 8/14/89).
(i)(a) *Training Provider:* Delaware Technical & Community College, Stanton Campus.
Address: Churchman Center, Churchman's Rd., New Castle, DE 19804, Contact: Fritz Kin, Phone: (302) 323-9602.
(b) *Approved Courses:*
Abatement Worker (Certified 4/1/88).
Abatement Worker Annual Review (Certified 5/5/89).
Contractor/Supervisor (Certified 4/1/88).
Contractor/Supervisor Annual Review (Certified 5/5/89).
(ii)(a) *Training Provider:* Delaware Technical & Community College, Terry Campus.

Address: 1832 North Dupont Pkwy., Dover, DE 19901, Contact: David T. Stanley, Phone: (302) 736-5428.

(b) *Approved Courses:*

Abatement Worker (Certified 4/1/88).
Abatement Worker Annual Review (Certified 5/5/89).
Contractor/Supervisor (Certified 4/1/88).
Contractor/Supervisor Annual Review (Certified 5/5/89).

(iii)(a) *Training Provider:* Local Union No. 42 Heat - Pipe & Frost Union.

Address: 1188 River Rd., New Castle, DE 19720, Contact: Robert Holden, Phone: (302) 328-4203.

(b) *Approved Courses:*

Abatement Worker (Certified 3/5/87).
Abatement Worker Annual Review (Certified 3/5/87).
Contractor/Supervisor (Certified 3/5/87).
Contractor/Supervisor Annual Review (Certified 3/5/87).

(iv)(a) *Training Provider:* Local Union No. 626 United Brotherhood of Carpenters and Joiners of America.

Address: 626 Wilmington Road, New Castle, DE 19720, Contact: Robert A. McCullough, Phone: (302) 328-9430 Ext. 9439.

(b) *Approved Courses:*

Abatement Worker (Certified 8/8/90).
Abatement Worker Annual Review (Certified 8/8/90).
Contractor/Supervisor (Certified 8/8/90).
Contractor/Supervisor Annual Review (Certified 8/8/90).

Illinois

(6)(a) *State Agency:* Illinois Department of Public Health Division of Environmental Health, Address: 525 West Jefferson St, Springfield, IL 62761, Contact: R. Kent Cook, Phone: (217) 782-3517.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 3/13/90).
Contractor/Supervisor (full from 3/13/90).
Inspector (full from 3/13/90).
Inspector/Management Planner (full from 3/13/90).
Project Designer (full from 3/13/90).

(i)(a) *Training Provider:* Aerostat Environmental Engineering Corp.

Address: 2817 Atchison Avenue, Lawrence, KS 66047, Contact: Joe Stimac, Phone: (800) 828-6269.

(b) *Approved Courses:*

Contractor/Supervisor (Certified 9/17/90).
Contractor/Supervisor Annual Review (Certified 9/17/90).
Inspector/Management Planner (Certified 9/17/90).
Inspector/Management Planner Annual Review (Certified 9/17/90).

(ii)(a) *Training Provider:* American Asbestos Institute Inc.

Address: P.O. Box 7477, Springfield, IL 62791, Contact: Donald Handy, Phone: (217) 523-8747.

(b) *Approved Courses:*

Abatement Worker (Certified 8/15/90).
Abatement Worker Annual Review (Certified 8/15/90).
Contractor/Supervisor (Certified 8/15/90).
Contractor/Supervisor Annual Review (Certified 8/15/90).
Inspector Annual Review (Certified 9/20/90).
Inspector/Management Planner (Certified 9/20/90).

(iii)(a) *Training Provider:* Asbestos Abatement Training Center Inc.

Address: Route 1 Box 209, Lacon, IL 61540, Contact: Brian Kline, Phone: (309) 246-3183.

(b) *Approved Courses:*

Abatement Worker (Certified 8/22/90).
Abatement Worker Annual Review (Certified 8/22/90).
Contractor/Supervisor (Certified 8/22/90).
Contractor/Supervisor Annual Review (Certified 8/22/90).

(iv)(a) *Training Provider:* Asbestos Professional Services, Inc.

Address: 501 North Second St., P.O. Box 364, Breese, IL 62230, Contact: Donald T. Anderson, Jr., Phone: (618) 526-2742.

(b) *Approved Courses:*

Abatement Worker (Certified 10/22/90).
Abatement Worker Annual Review (Certified 10/22/90).

(v)(a) *Training Provider:* Asbestos Workers Local No. 1.

Address: 3325 Hollenberg Drive, St. Louis, MO 63044, Contact: James Hagen, Phone: (314) 291-7399.

(b) *Approved Courses:*

Abatement Worker (Certified 11/1/90).
Abatement Worker Annual Review (Certified 11/1/90).
Contractor/Supervisor (Certified 11/1/90).
Contractor/Supervisor Annual Review (Certified 11/1/90).

(vi)(a) *Training Provider:* Auburn Environmental Services.

Address: 416 East Jefferson, Auburn, IL 62615, Contact: Linda Funk, Phone: (217) 438-6694.

(b) *Approved Course:*

Abatement Worker (Certified 10/18/90).

(vii)(a) *Training Provider:* Construction/General Labor of Chicago.

Address: 4 N 250 Old Cary Avenue, Cloverdale, IL 60103, Contact: Anthony Solano, Phone: (708) 323-8999.

(b) *Approved Courses:*

Abatement Worker (Certified 8/10/90).
Abatement Worker Annual Review (Certified 8/10/90).
Contractor/Supervisor (Certified 8/10/90).
Contractor/Supervisor Annual Review (Certified 9/18/90).

(viii)(a) *Training Provider:* ESCOR, Inc.

Address: 629 Greenbay Road, Wilmette, IL 60091, Contact: R. Eric Zimmerman, Phone: (708) 256-6970.

(b) *Approved Courses:*

Abatement Worker (Certified 11/2/90).
Abatement Worker Annual Review (Certified 11/2/90).
Contractor/Supervisor (Certified 11/19/90).
Contractor/Supervisor Annual Review (Certified 11/19/90).
Inspector Annual Review (Certified 11/2/90).
Inspector/Management Planner (Certified 11/2/90).

(ix)(a) *Training Provider:* Emergency Medical Service Consults of America Emsc.

Address: 12125 S. 90th Avenue, Palos Park, IL 60464, Contact: Fred Debow, Phone: (707) 448-7500.

(b) *Approved Courses:*

Abatement Worker (Certified 9/6/90).
Abatement Worker Annual Review (Certified 9/6/90).

(x)(a) *Training Provider:* Environmental Group Service LTD (EGSL).

Address: 215 West Huron, Chicago, IL 60610, Contact: Vahooman Mirkaef, Phone: (312) 642-8434.

(b) *Approved Courses:*

Abatement Worker (Certified 5/14/90).
Abatement Worker Annual Review (Certified 5/14/90).
Contractor/Supervisor (Certified 5/14/90).
Contractor/Supervisor Annual Review (Certified 5/14/90).

(xi)(a) *Training Provider:* Environmental Safety Training Services.

Address: 11802 Hanson Rd., Algonquin, IL 60102, Contact: Robert Sayre, Phone: (708) 658-5950.

(b) *Approved Courses:*

Abatement Worker (Certified 10/1/90).
Abatement Worker Annual Review (Certified 12/6/90).

(xii)(a) *Training Provider:*
Environmental Science & Engineering, Inc.
Address: 8900 N. Industrial Rd., Peoria, IL 61615, Contact: Kirk Sweetland, Phone: (309) 692-4422.
(b) *Approved Courses:*
Abatement Worker (Certified 10/25/90).
Abatement Worker Annual Review (Certified 10/25/90).
Contractor/Supervisor (Certified 8/10/90).
Contractor/Supervisor Annual Review (Certified 8/10/90).
(xiii)(a) *Training Provider:* Georgia Tech Research Institute.
Address: GTRI/ESTL/ESB-29 O'Keef Building, Atlanta, GA 30332, Contact: Margaret Ojala, Phone: (404) 894-8078.
(b) *Approved Courses:*
Contractor/Supervisor (Certified 11/8/90).
Contractor/Supervisor Annual Review (Certified 11/8/90).
(xiv)(a) *Training Provider:* Hall-Kimbrell Environmental Services.
Address: 75 Executive Drive, Suite 434, Aurora, IL 60504, Contact: Greg Corder, Phone: (708) 898-9414.
(b) *Approved Courses:*
Abatement Worker (Certified 8/3/90).
Abatement Worker Annual Review (Certified 8/9/90).
Contractor/Supervisor (Certified 8/3/90).
Contractor/Supervisor Annual Review (Certified 8/9/90).
Inspector/Management Planner (Certified 8/3/90).
Inspector/Management Planner Annual Review (Certified 8/16/90).
(xv)(a) *Training Provider:* Heat and Frost Insulators Local No. 17.
Address: 3850 Racine Avenue, Chicago, IL 60609, Contact: John P. Shine, Phone: (312) 247-1007.
(b) *Approved Courses:*
Abatement Worker (Certified 8/29/90).
Abatement Worker Annual Review (Certified 8/29/90).
Contractor/Supervisor (Certified 8/29/90).
Contractor/Supervisor Annual Review (Certified 8/29/90).
(xvi)(a) *Training Provider:* Hinds Asbestos Consultant & Technical Services.
Address: 1037 South Fourth Street, Springfield, IL 62703, Contact: Patricia Elmore, Phone: (217) 789-7823.
(b) *Approved Courses:*
Contractor/Supervisor (Certified 12/5/90).
Contractor/Supervisor Annual Review (Certified 12/5/90).
(xvii)(a) *Training Provider:*
Hygienetics, Inc.
Address: 2200 Powell Street, Suite 800, Emeryville, CA 94608, Contact: Allison Roberts, Phone: (415) 547-3886.
(b) *Approved Course:*
Inspector/Management Planner (Certified 11/1/90).
(xviii)(a) *Training Provider:* I.P.C., Chicago, Inc.
Address: 4309 West Henderson, Chicago, IL 60641, Contact: Robert Cooley, Phone: (312) 718-7395.
(b) *Approved Courses:*
Abatement Worker (Certified 8/7/90).
Abatement Worker Annual Review (Certified 8/7/90).
Contractor/Supervisor (Certified 8/7/90).
Contractor/Supervisor Annual Review (Certified 8/7/90).
(xix)(a) *Training Provider:* IL Laborers & Contractors Training Program.
Address: R.R. 3, Mt Sterling, IL 62353, Contact: Anthony Romolo, Phone: (217) 773-2741.
(b) *Approved Courses:*
Abatement Worker (Certified 8/9/90).
Abatement Worker Annual Review (Certified 8/9/90).
Contractor/Supervisor (Certified 9/24/90).
Contractor/Supervisor Annual Review (Certified 10/31/90).
(xx)(a) *Training Provider:* Ideal & Associate Environmental Engineer Services, Inc.
Address: 1102 South Main St., Bloomington, IL 61702, Contact: James S. Langan, Phone: (309) 828-4259.
(b) *Approved Courses:*
Abatement Worker (Certified 6/15/90).
Abatement Worker Annual Review (Certified 6/15/90).
Contractor/Supervisor (Certified 6/15/90).
Contractor/Supervisor Annual Review (Certified 6/15/90).
(xxi)(a) *Training Provider:* Keter Environmental, Ltd.
Address: 699 Edgewood Avenue, Elmhurst, IL 60126, Contact: Phil Pekron, Phone: (708) 941-0201.
(b) *Approved Courses:*
Abatement Worker (Certified 9/28/90).
Abatement Worker Annual Review (Certified 9/28/90).
Contractor/Supervisor (Certified 9/28/90).
Contractor/Supervisor Annual Review (Certified 9/28/90).
(xxii)(a) *Training Provider:* Local 101 Technical Training Center.
Address: 728 Broadway, Gary, IN 46402, Contact: Thomas Moore, Phone: (219) 885-0005.
(b) *Approved Course:*
Abatement Worker (Certified 9/17/90).
(xxiii)(a) *Training Provider:* MAIC Chicago Lung Association University of Illinois.
Address: 1440 W. Washington, Chicago, IL 60607, Contact: Steve Margevich. Phone: (312) 829-1277.
(b) *Approved Courses:*
Abatement Worker (Certified 7/30/90).
Abatement Worker Annual Review (Certified 7/30/90).
Contractor/Supervisor (Certified 7/30/90).
Contractor/Supervisor Annual Review (Certified 7/30/90).
Inspector/Management Planner (Certified 7/30/90).
Inspector/Management Planner Annual Review (Certified 7/30/90).
Project Designer (Certified 8/2/90).
(xxiv)(a) *Training Provider:* Mayhew Environmental Training Assoc.
Address: 901 Kentucky, Lawrence, KS 66044, Contact: Thomas Mayhew, Phone: (913) 842-6382.
(b) *Approved Courses:*
Abatement Worker (Certified 9/20/90).
Abatement Worker Annual Review (Certified 9/20/90).
Contractor/Supervisor (Certified 9/20/90).
Contractor/Supervisor Annual Review (Certified 9/20/90).
(xxv)(a) *Training Provider:* McDowell Business Training Center.
Address: 1313 S Michigan 3rd Floor, Chicago, IL 60605, Contact: Edward McDowell, Phone: (312) 427-2598.
(b) *Approved Course:*
Abatement Worker (Certified 9/12/90).
(xxvi)(a) *Training Provider:* Midwest Institute of Asbestos.
Address: 4747 W. Peterson, Suite 101, Chicago, IL 60646, Contact: Bogdan Mucha, Phone: (312) 545-3222.
(b) *Approved Courses:*
Abatement Worker (Certified 10/17/90).
Abatement Worker Annual Review (Certified 10/17/90).
(xxvii)(a) *Training Provider:* Milwaukee Asbestos Information Center.
Address: 2224 S. Kinnickinnic, Milwaukee, WI 53207, Contact: Tom Ortell, Phone: (800) 848-3298.
(b) *Approved Courses:*
Abatement Worker (Certified 12/6/90).
Abatement Worker Annual Review (Certified 12/6/90).
Contractor/Supervisor (Certified 12/6/90).
Contractor/Supervisor Annual Review (Certified 12/6/90).

Project Designer (Certified 12/6/90).
Project Designer Annual Review (Certified 12/6/90).

(xxviii)(a) *Training Provider:* Moraine Valley Community College.

Address: 10900 South 88th Ave., Palos Hills, IL 60465, Contact: Dale Luecht, Phone: (708) 974-5735.

(b) *Approved Courses:*

Abatement Worker (Certified 7/27/90).
Abatement Worker Annual Review (Certified 7/27/90).
Contractor/Supervisor (Certified 7/27/90).
Contractor/Supervisor Annual Review (Certified 8/8/90).
Inspector/Management Planner (Certified 8/8/90).
Inspector/Management Planner Annual Review (Certified 8/22/90).

(xxix)(a) *Training Provider:* Olive-Harvey College Skill Center.

Address: 10001 South Woodlawn Avenue, Chicago, IL 60628, Contact: Verondo Tucker, Phone: (312) 660-4841.

(b) *Approved Course:*

Abatement Worker (Certified 10/5/90).

(xxx)(a) *Training Provider:* Pat Services.

Address: 133 Hollywood Circle, Creve Coeur, IL 61611, Contact: Cheryl McGinnis, Phone: (309) 698-0703.

(b) *Approved Courses:*

Abatement Worker (Certified 11/21/90).
Abatement Worker Annual Review (Certified 11/21/90).
Contractor/Supervisor (Certified 11/21/90).
Contractor/Supervisor Annual Review (Certified 11/21/90).

(xxxi)(a) *Training Provider:* Performance Systems, Inc.

Address: 4804 Oakwood Avenue, Downers Grove, IL 60515, Contact: John T. Gammuto, Phone: (708) 968-5959.

(b) *Approved Course:*

Abatement Worker (Certified 11/21/90).

(xxxii)(a) *Training Provider:* Safer Foundation.

Address: 571 W. Jackson, Chicago, IL 60606, Contact: Eli Caliph, Phone: (312) 922-2200.

(b) *Approved Courses:*

Abatement Worker (Certified 8/17/90).
Abatement Worker Annual Review (Certified 8/17/90).

(xxxiii)(a) *Training Provider:* Safety Training of Illinois.

Address: P.O. Box 11093, Springfield, IL 62791, Contact: Dave Farris, Phone: (217) 787-9091.

(b) *Approved Courses:*

Abatement Worker (Certified 7/31/90).
Abatement Worker Annual Review (Certified 7/31/90).

(xxxiv)(a) *Training Provider:* Schemel Asbestos Abatement Co.

Address: 104B North Jackson, Perryville, MO 63775, Contact: Claire E. Schemel, Phone: (314) 547-2558.

(b) *Approved Course:*

Contractor/Supervisor (Certified 12/4/90).

(xxxv)(a) *Training Provider:* Summit Abatement Contracting, Inc.

Address: 7255 Tower Road, Battle Creek, MI 49017, Contact: Treina Norris, Phone: (616) 968-4242.

(b) *Approved Courses:*

Abatement Worker (Certified 10/19/90).
Abatement Worker Annual Review (Certified 10/19/90).
Contractor/Supervisor (Certified 10/19/90).
Contractor/Supervisor Annual Review (Certified 10/19/90).

(xxxvi)(a) *Training Provider:* The American Center for Educational Developement.

Address: 316 South Wabash Ave., Chicago, IL 60604, Contact: Francine F. Rossi, Phone: (312) 322-2233.

(b) *Approved Courses:*

Abatement Worker (Certified 7/27/90).
Abatement Worker Annual Review (Certified 7/27/90).
Contractor/Supervisor (Certified 7/27/90).
Contractor/Supervisor Annual Review (Certified 7/27/90).

(xxxvii)(a) *Training Provider:* The Brand Companies.

Address: 1420 Renaissance Dr., Park Ridge, IL 60068, Contact: Frank Barta, Phone: (708) 298-1200.

(b) *Approved Courses:*

Abatement Worker (Certified 7/2/90).
Abatement Worker Annual Review (Certified 7/2/90).
Contractor/Supervisor (Certified 7/2/90).
Contractor/Supervisor Annual Review (Certified 7/2/90).

(xxxviii)(a) *Training Provider:* The Environmental Institute.

Address: 350 Franklin Road, Suite 300, Marietta, GA 30067, Contact: Rachel McCain, Phone: (404) 425-2000.

(b) *Approved Courses:*

Abatement Worker (Certified 11/1/90).
Abatement Worker Annual Review (Certified 11/1/90).
Contractor/Supervisor (Certified 11/1/90).
Contractor/Supervisor Annual Review (Certified 11/1/90).

(xxxix)(a) *Training Provider:* The Environmental Training Center.

Address: 1988 Innerbelt Business Center Dr, St. Louis, MO 63114, Contact: Ronald Neislar, Phone: (314) 428-7020.

(b) *Approved Courses:*

Abatement Worker (Certified 9/26/90).
Abatement Worker Annual Review (Certified 9/26/90).
Contractor/Supervisor (Certified 9/26/90).
Contractor/Supervisor Annual Review (Certified 9/26/90).

(xl)(a) *Training Provider:* The National Training Fund.

Address: 601 N. Fairfax Street, Suite 240, Alexandria, VA 22314, Contact: Gerald Olejniczak, Phone: (703) 793-7200.

(b) *Approved Courses:*

Abatement Worker (Certified 10/25/90).
Abatement Worker Annual Review (Certified 10/25/90).
Contractor/Supervisor (Certified 10/25/90).
Contractor/Supervisor Annual Review (Certified 10/25/90).

(xli)(a) *Training Provider:* United Brotherhood of Carpenters & Joiners UBC.

Address: 101 Constitution Avenue, NW., Washington, DC 20001, Contact: Joseph Durst, Jr., Phone: (202) 546-6706.

(b) *Approved Courses:*

Abatement Worker (Certified 8/27/90).
Abatement Worker Annual Review (Certified 8/27/90).

(xlii)(a) *Training Provider:* United Environmental System, Inc.

Address: 202 South State Street, Chicago, IL 60604, Contact: David Mizrahi, Phone: (312) 663-5693.

(b) *Approved Courses:*

Abatement Worker (Certified 8/23/90).
Abatement Worker Annual Review (Certified 8/23/90).
Contractor/Supervisor (Certified 8/23/90).

(xliii)(a) *Training Provider:* United Science Industries, Inc.

Address: 621 Ninth Street, Carlyle, IL 62231, Contact: Jay Koch, Phone: (618) 594-4023.

(b) *Approved Courses:*

Abatement Worker (Certified 9/19/90).
Abatement Worker Annual Review (Certified 9/19/90).
Contractor/Supervisor (Certified 9/19/90).
Contractor/Supervisor Annual Review (Certified 9/19/90).

(xliv)(a) *Training Provider:* University of Cincinnatti Department of Environmental Health.

Address: 3223 Eden Avenue ML-056, Cincinnatti, OH 45267, Contact: Judy Jarrell, Phone: (513) 558-1730.

(b) *Approved Courses:*

Abatement Worker (Certified 10/15/90).
Abatement Worker Annual Review (Certified 10/15/90).
Contractor/Supervisor (Certified 10/15/90).
Contractor/Supervisor Annual Review (Certified 10/15/90).
Inspector/Management Planner (Certified 10/15/90).
Inspector/Management Planner Annual Review (Certified 10/15/90).

Indiana

(7)(a) *State Agency:* Indiana Department of Environmental Management, Office of Air Management, Address: 105 South Meridian St., P.O. Box 6015, Indianapolis, IN 46206-6015, Contact: Debra Dubenetzky, Phone: (317) 232-8373.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 11/10/89).
Contractor/Supervisor (full from 11/10/89).
Inspector (full from 11/10/89).
Inspector/Management Planner (full from 11/10/89).
Project Designer (full from 11/10/89).

(i)(a) *Training Provider:* Academy for Environmental Training Inc.

Address: 316 South State Avenue, Indianapolis, IN 46201, Contact: Anne Gress, Phone: (317) 269-3620.

(b) *Approved Courses:*

Abatement Worker (Certified 12/3/90).
Abatement Worker Annual Review (Certified 12/3/90).
Contractor/Supervisor (Certified 12/3/90).
Contractor/Supervisor Annual Review (Certified 12/12/90).

(ii)(a) *Training Provider:* Environmental Management Institute, Inc.

Address: 611 North Capitol, Indianapolis, IN 46204, Contact: Jack Leonard, Phone: (317) 262-5029.

(b) *Approved Courses:*

Abatement Worker (Certified 10/19/90).
Abatement Worker Annual Review (Certified 10/19/90).
Contractor/Supervisor (Certified 10/19/90).
Contractor/Supervisor Annual Review (Certified 10/19/90).
Inspector/Management Planner (Certified 10/26/90).
'nspector/Management Planner Annual Review (Certified 10/26/90).

(iii)(a) *Training Provider:* Environmental Safety Training Services Fund.

Address: 11802 Hanson Road, Algonquin, IL 60102, Contact: Robert Sayre, Phone: (708) 658-5950.

(b) *Approved Course:*

Abatement Worker (Certified 10/23/90).

(iv)(a) *Training Provider:* Indiana Laborers' Training Trust Fund.

Address: P.O. Box 758, Bedford, IN 47421, Contact: Richard Fassino, Phone: (812) 279-9751.

(b) *Approved Courses:*

Abatement Worker (Certified 10/1/90).
Abatement Worker Annual Review (Certified 10/1/90).
Contractor/Supervisor (Certified 10/1/90).
Contractor/Supervisor Annual Review (Certified 10/1/90).

Iowa

(8)(a) *State Agency:* Iowa Dept. of Education School Facilities Administration & Accreditation, Address: Grimes State Office Bldg., Des Moines, IA 50319-0146, Contact: C. Milton Wilson, Phone: (515) 281-4743.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 11/30/87).
Contractor/Supervisor (full from 11/30/87).
Inspector (full from 11/30/87).
Inspector/Management Planner (full from 11/30/87).
Project Designer (full from 11/30/87).

(i)(a) *Training Provider:* Advanced Technologies Corp.

Address: P.O. Box 902, Cedar Falls, IA 50613, Contact: Michael L. Llewellyn, Phone: (319) 266-7524.

(b) *Approved Course:*

Contractor/Supervisor (Certified 7/15/90).

(ii)(a) *Training Provider:* Ames Environmental, Inc.

Address: 3910 Lincoln Way, Ames, IA 50010, Contact: Ann Fairchild, Phone: (515) 292-3400.

(b) *Approved Courses:*

Abatement Worker (Certified 1/18/90).
Abatement Worker Annual Review (Certified 1/18/90).
Inspector Annual Review (Certified 12/8/89).

(iii)(a) *Training Provider:* Iowa Electric Light & Power.

Address: Duane Arnold Nuclear Energy Center, 3363 DEAC Rd., Palo, IA 52324, Contact: Robert Tucker, Phone: (319) 851-7574.

(b) *Approved Course:*

Contractor/Supervisor (Certified 10/1/89).

(iv)(a) *Training Provider:* Iowa Environmental Services, Inc.

Address: 820 First St., Suite 200, West Des Moines, IA 50365, Contact: Glenn Soyer, Phone: (515) 279-8042.

(b) *Approved Courses:*

Abatement Worker (Certified 3/27/89).
Contractor/Supervisor (Certified 10/1/89).

(v)(a) *Training Provider:* Iowa Illinois Thermal Insulation Inc.

Address: P.O. Box 931, Davenport, IA 52805-0931, Contact: Richard H. Knauss, Phone: (319) 324-0685.

(b) *Approved Courses:*

Abatement Worker (Certified 12/1/89).

(vi)(a) *Training Provider:* M & W Environmental Consultants, Inc.

Address: RR No. 1 Wells Dr., Canton, IA 61520, Contact: Vahooman Mirkhaef, Phone: (800) 445-8745.

(b) *Approved Course:*

Inspector/Management Planner (Certified 10/1/89).

(vii)(a) *Training Provider:* Wisconsin Asbestos Advisory Team, Inc.

Address: N9402 Lakeshore Drive, Van Dyne, WI 54979, Contact: Robert P. LaPoint, Phone: (414) 922-8110.

(b) *Approved Courses:*

Contractor/Supervisor (Certified 7/15/90).
Contractor/Supervisor Annual Review (Certified 7/15/90).

Kansas

(9)(a) *State Agency:* Kansas Dept. of Health and Environment Asbestos Control Section, Address: Forbes Field Building 740, Topeka, KS 66620-7430, Contact: Gary Miller, Phone: (913) 296-1547.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (interim from 11/6/86).*
Abatement Worker (full from 12/16/87).*
Contractor/Supervisor (interim from 11/6/86).
Contractor/Supervisor (full from 12/16/87).

Maine

(10)(a) *State Agency:* State of Maine Department of Environmental Protection, Address: State House Station No. 17, Augusta, ME 04333, Contact: Ed Antz, Phone: (207) 582-8740.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 11/5/90).

* Applies only to workers who have taken the Kansas Contractor/Supervisor course and passed the State's worker exam.

Contractor/Supervisor (full from 11/5/90).
Inspector (full from 11/5/90).
Inspector/Management Planner (full from 11/5/90).
Project Designer (full from 11/5/90).

(i)(a) *Training Provider:* Balsam Environmental Consultants.
Address: 5 Industrial Way, Salem, NH 03079, Contact: Douglas Lawson, Phone: (603) 893-0616.

(b) *Approved Courses:*
Inspector/Management Planner (Certified 12/3/90).
Project Designer (Certified 12/3/90).

(ii)(a) *Training Provider:* Maine Labor Group on Health.
Address: P.O. Box V, Augusta, ME 04330, Contact: Diana White, Phone: (207) 622-7823.

(b) *Approved Courses:*
Abatement Worker (Certified 12/3/90).
Abatement Worker Annual Review (Certified 12/3/90).
Contractor/Supervisor (Certified 12/3/90).
Contractor/Supervisor Annual Review (Certified 12/3/90).

(iii)(a) *Training Provider:* National Asbestos Council.
Address: c/o MACC, P.O. Box 1568, 416 Lewiston Jct. Road, Auburn, ME 04210, Contact: Ron Tillson, Phone: (207) 783-4260.

(b) *Approved Courses:*
Abatement Worker (Certified 12/3/90).
Abatement Worker Annual Review (Certified 12/3/90).

(iv)(a) *Training Provider:* Northeast Test Consultants.
Address: 587 Spring Street, Westbrook, ME 04092, Contact: Tom Sukeforth, Phone: (207) 854-3939.

(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 12/3/90).
Contractor/Supervisor Annual Review (Certified 12/3/90).

Massachusetts

(11)(a) *State Agency:* Massachusetts Dept. of Labor & Industries; Division of Occupational Hygiene, Address: 1001 Watertown St., West Newton, MA 02165, Contact: Patricia Circone, Phone: (617) 727-3983.

(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 10/30/87).
Contractor/Supervisor (full from 10/30/87).
Inspector (full from 10/30/87).
Inspector/Management Planner (full from 10/30/87).
Project Designer (full from 10/30/87).

(i)(a) *Training Provider:* A & S Training School, Inc.
Address: 99 South Cameron St., Harrisburg, PA 17101, Contact: William I. Roberts, Phone: (717) 257-1360.

(b) *Approved Courses:*
Abatement Worker (Certified 7/31/90).
Abatement Worker Annual Review (Certified 7/31/90).
Contractor/Supervisor (Certified 5/4/88).
Contractor/Supervisor Annual Review (Certified 5/4/89).

(ii)(a) *Training Provider:* Abatement Technical Corporation c/o Ecosystems, Inc.
Address: 5 North Meadow Rd., Medfield, MA 02052, Contact: Joseph C. Mohen, Phone: (609) 692-0883.

(b) *Approved Courses:*
Abatement Worker (Certified 4/28/88 to 4/28/89 **only**).
Contractor/Supervisor (Certified 4/28/88 to 4/28/89 **only**).
Inspector/Management Planner (Certified 4/28/88 to 4/28/89 **only**).
Project Designer (Certified 4/28/88 to 4/28/89 **only**).

(iii)(a) *Training Provider:* Asbestos Workers Union Local 43.
Address: 1053 Burts Pit Rd., Northampton, MA 01000, Contact: John Charest, Jr., Phone: (413) 584-0028.

(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 4/27/90).
Contractor/Supervisor Annual Review (Certified 4/27/90).

(iv)(a) *Training Provider:* Asbestos Workers Union Local No. 6.
Address: 56 Rolland St., Boston, MA 02129, Contact: James P. McCourt, Phone: (617) 387-2679.

(b) *Approved Courses:*
Abatement Worker (Certified 4/25/88).
Abatement Worker Annual Review (Certified 4/25/89).
Contractor/Supervisor (Certified 4/25/88).
Contractor/Supervisor Annual Review (Certified 4/25/89).

(v)(a) *Training Provider:* Astoria Industries, Inc.
Address: 538 Stewart Ave., Brooklyn, NY 11222, Contact: Gary Dipaolo, Phone: (718) 387-0011.

(b) *Approved Course:*
Abatement Worker (Certified 4/8/88 to 4/8/89 **only**).

(vi)(a) *Training Provider:* Astral Environmental Assoc.
Address: 3 Adams Lane, Westford, MA 01886, Contact: Dorothy Young, Phone: (508) 692-2070.

(b) *Approved Courses:*
Abatement Worker (Certified 6/5/89).
Abatement Worker Annual Review (Certified 7/13/89).
Contractor/Supervisor (Certified 7/13/89).
Contractor/Supervisor Annual Review (Certified 7/13/89).

(vii)(a) *Training Provider:* BCM Engineering.
Address: 12 Alfred St., Suite 300, Woburn, MA 01801, Contact: Pam Evans, Phone: (617) 935-7080.

(b) *Approved Courses:*
Abatement Worker (Certified 4/28/88).
Inspector/Management Planner (Certified 4/28/88).
Project Designer (Certified 4/28/88).

(viii)(a) *Training Provider:* Balsm Environmental Consultants.
Address: 59 Stiles Rd., Salem, NH 03079, Contact: Dougles Lawson, Phone: (603) 893-0616.

(b) *Approved Courses:*
Inspector/Management Planner (Certified 3/1/90).
Inspector/Management Planner Annual Review (Certified 3/1/90).
Project Designer (Certified 3/1/90).
Project Designer Annual Review (Certified 3/1/90).

(ix)(a) *Training Provider:* Certified Engineering & Testing Co., Inc.
Address: 100 Grossman Dr., Braintree, MA 02184, Contact: Robert Thornburgh, Phone: (617) 849-0111.

(b) *Approved Courses:*
Abatement Worker (Certified 9/26/88).
Abatement Worker Annual Review (Certified 9/26/88).
Contractor/Supervisor (Certified 9/26/88).
Contractor/Supervisor Annual Review (Certified 9/26/88).
Inspector/Management Planner (Certified 9/26/88).
Inspector/Management Planner Annual Review (Certified 9/26/88).
Project Designer (Certified 9/26/88).

(x)(a) *Training Provider:* Community College of Rhode Island.
Address: 1762 Louisquisset Pike, Lincoln, RI 02865, Contact: Richard Tessier, Phone: (401) 333-7060.

(b) *Approved Courses:*
Contractor/Supervisor Annual Review (Certified 2/5/90).
Inspector/Management Planner Annual Review (Certified 8/3/89).

(xi)(a) *Training Provider:* Con-Test, Inc.
Address: P.O. Box 591, East Longmeadow, MA 01028, Contact: Brenda Bolduc, Phone: (413) 525-1198.

(b) *Approved Courses:*
Abatement Worker (Certified 2/25/88).
Abatement Worker Annual Review (Certified 2/25/89).
Contractor/Supervisor (Certified 2/25/88).
Contractor/Supervisor Annual Review (Certified 2/25/89).
Inspector/Management Planner (Certified 2/25/88).
Inspector/Management Planner Annual Review (Certified 2/25/89).
Project Designer (Certified 2/25/88).
Project Designer Annual Review (Certified 2/25/88).

(xii)(a) *Training Provider:* Dennison Environmental, Inc.

Address: 35 Industrial Hwy., Woburn, MA 01880, Contact: Joan Ryan, Phone: (617) 932-9400.

(b) *Approved Courses:*
Abatement Worker (Certified 4/8/88).
Abatement Worker Annual Review (Certified 4/8/89).
Contractor/Supervisor (Certified 4/8/88).
Contractor/Supervisor Annual Review (Certified 4/8/89).
Inspector (Certified 4/8/88).
Inspector/Management Planner Annual Review (Certified 4/8/89).

(xiii)(a) *Training Provider:* ESTRI.

Address: 55 Ferncraft Rd., Suite 201, Danvers, MA 01923, Contact: Martin Leavitt, Phone: (508) 777-8789.

(b) *Approved Courses:*
Abatement Worker (Certified 7/17/89).
Abatement Worker Annual Review (Certified 7/17/89).
Contractor/Supervisor (Certified 7/17/89).
Contractor/Supervisor Annual Review (Certified 7/17/89).
Inspector/Management Planner (Certified 9/12/89).
Inspector/Management Planner Annual Review (Certified 9/12/89).

(xiv)(a) *Training Provider:* EcoSystems, Inc.

Address: 2 Deerwood Rd., Westport, CT 06880, Contact: Richard Doyle, Phone: (203) 226-4421.

(b) *Approved Courses:*
Abatement Worker (Certified 6/13/89).
Contractor/Supervisor (Certified 6/13/89).

(xv)(a) *Training Provider:* Enviromed Services.

Address: 25 Science Park, New Haven, CT 06511, Contact: Lawrence J. Cannon, Phone: (203) 786-5580.

(b) *Approved Courses:*
Abatement Worker (Certified 10/16/89).
Contractor/Supervisor (Certified 10/16/89).
Contractor/Supervisor Annual Review (Certified 10/16/89).

(xvi)(a) *Training Provider:* Environmental Training Corp.

Address: 100 Moody St., Suite 200, Ludlow, MA 01056, Contact: Ann Folta, Phone: (413) 589-1882.

(b) *Approved Courses:*
Abatement Worker (Certified 8/5/88).
Abatement Worker Annual Review (Certified 8/5/89).
Contractor/Supervisor (Certified 8/5/88).
Contractor/Supervisor Annual Review (Certified 8/5/89).

(xvii)(a) *Training Provider:* Environmental Training Services.

Address: 62 - H Montvale Pl., Stoneham, MA 02180, Contact: Maryann Martin, Phone: (617) 279-0855.

(b) *Approved Courses:*
Abatement Worker (Certified 4/8/88).
Abatement Worker Annual Review (Certified 4/8/89).
Contractor/Supervisor (Certified 4/8/88).
Contractor/Supervisor Annual Review (Certified 4/8/89).
Project Designer (Certified 4/8/88).
Project Designer Annual Review (Certified 4/8/89).

(xviii)(a) *Training Provider:* General Physics Corp.

Address: 6700 Alexander Bell Dr., Columbia, MD 21046, Contact: Andy Marsh, Phone: (301) 290-2300.

(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 9/6/88).
Contractor/Supervisor (Certified 9/6/88).
Contractor/Supervisor Annual Review (Certified 9/6/88).

(xix)(a) *Training Provider:* Hall-Kimbrell Environmental Services.

Address: P.O. Box 307, Lawrence, KS 66046, Contact: Alice Hart, Phone: (800) 346-2860.

(b) *Approved Courses:*
Abatement Worker (Certified 4/25/88).
Abatement Worker Annual Review (Certified 4/25/88).
Contractor/Supervisor (Certified 4/25/88).
Contractor/Supervisor Annual Review (Certified 4/25/88).
Inspector/Management Planner (Certified 4/25/88).
Inspector/Management Planner Annual Review (Certified 4/25/88).
Project Designer (Certified 4/25/88).
Project Designer Annual Review (Certified 4/25/88).

(xx)(a) *Training Provider:* Harvard School of Public Health.

Address: 677 Huntington Ave., Boston, MA 02115, Contact: William A. Burgess, Phone: (617) 732-1171.

(b) *Approved Courses:*
Contractor/Supervisor (Certified 2/25/88).
Inspector/Management Planner (Certified 2/25/88).
Inspector/Management Planner Annual Review (Certified 5/25/89).
Project Designer (Certified 2/25/88).
Project Designer Annual Review (Certified 5/25/89).

(xxi)(a) *Training Provider:* Hygeia, Inc.

Address: 303 Bear Hill Rd., Waltham, MA 02154, Contact: David Kaplan, Phone: (617) 890-4999.

(b) *Approved Courses:*
Abatement Worker (Certified 8/5/88).
Contractor/Supervisor (Certified 8/5/88).
Inspector/Management Planner (Certified 3/23/90).
Inspector/Management Planner Annual Review (Certified 3/23/90).
Project Designer (Certified 8/5/88).

(xxii)(a) *Training Provider:* Hygienetics, Inc.

Address: 150 Causeway St., Boston, MA 02114, Contact: Marybeth Carver, Phone: (617) 723-4664.

(b) *Approved Courses:*
Abatement Worker (Certified 2/25/89).
Abatement Worker Annual Review (Certified 2/25/89).
Contractor/Supervisor (Certified 2/25/89).
Contractor/Supervisor Annual Review (Certified 2/25/89).
Inspector/Management Planner (Certified 2/25/89).
Inspector/Management Planner Annual Review (Certified 2/25/89).

(xxiii)(a) *Training Provider:* Institute for Environmental Education.

Address: 500 West Cummings Pk., Suite 3650, Woburn, MA 01801, Contact: Starla L. Engelhardt, Phone: (617) 935-7370.

(b) *Approved Courses:*
Abatement Worker (Certified 4/28/88).
Abatement Worker Annual Review (Certified 5/26/89).
Contractor/Supervisor (Certified 4/28/88).
Contractor/Supervisor Annual Review (Certified 5/26/89).
Inspector/Management Planner (Certified 4/28/88).
Inspector/Management Planner Annual Review (Certified 5/26/89).
Project Designer (Certified 4/28/88).
Project Designer Annual Review (Certified 4/28/88).

(xxiv)(a) *Training Provider:* JF Walton & Co.

Address: 201 Marginal St., P.O. Box 6120, Chelsea, MA 02150, Contact: James O'Connor, Phone: (617) 884-0350.

(b) *Approved Courses:*

Abatement Worker (Certified 3/28/88).
Abatement Worker Annual Review (Certified 3/28/89).

(xxv)(a) *Training Provider:* Kaselaan & D'Angelo Associates.

Address: 500 Victory Rd., Suite 270, North Quincy, MA 02171, Contact: Paul Heffernan, Phone: (617) 472-1330.

(b) *Approved Courses:*

Abatement Worker (Certified 2/25/88).
Abatement Worker Annual Review (Certified 2/25/89).
Contractor/Supervisor (Certified 2/25/88).
Contractor/Supervisor Annual Review (Certified 2/25/89).
Inspector/Management Planner (Certified 2/25/88).
Inspector/Management Planner Annual Review (Certified 2/25/89).
Project Designer (Certified 2/25/88).

(xxvi)(a) *Training Provider:* Mystic Air Quality Consultants.

Address: 1085 Buddington Rd., Groton, CT 06340, Contact: Christopher Eident, Phone: (203) 449-8903.

(b) *Approved Courses:*

Abatement Worker (Certified 1/11/89).
Abatement Worker Annual Review (Certified 2/2/90).
Contractor/Supervisor (Certified 1/11/89).
Contractor/Supervisor Annual Review (Certified 1/11/89).
Inspector/Management Planner (Certified 2/2/90).
Inspector/Management Planner Annual Review (Certified 2/2/90).

(xxvii)(a) *Training Provider:* National Asbestos Training Center of Kansas.

Address: 6600 College Blvd., Overland Park. KS 66211, Contact: Lani Himegarner, Phone: (913) 491-0181.

(b) *Approved Courses:*

Abatement Worker (Certified 5/20/88).
Abatement Worker Annual Review (Certified 5/20/89).
Contractor/Supervisor (Certified 5/20/88).
Contractor/Supervisor Annual Review (Certified 5/20/89).

(xxviii)(a) *Training Provider:* National Training Fund/Workers Institute for Safety & Health (WISH).

Address: 1126 16th St., NW., Washington, DC 20036, Contact: Scott Schneider, Phone: (202) 887-1980.

(b) *Approved Courses:*

Abatement Worker (Certified 5/10/88).
Contractor/Supervisor (Certified 5/10/88).
Contractor/Supervisor Annual Review (Certified 5/10/89).

(xxix)(a) *Training Provider:* New England Laborers Training Trust Fund.

Address: 37 East St., Hopkinton, MA 01748-2699, Contact: James Merloni, Jr., Phone: (617) 435-6316.

(b) *Approved Courses:*

Abatement Worker (Certified 2/25/88).
Abatement Worker Annual Review (Certified 2/25/89).
Contractor/Supervisor (Certified 2/25/89).
Contractor/Supervisor Annual Review (Certified 8/8/89).

(xxx)(a) *Training Provider:* Northern Asbestos Abatement Co.

Address: 757 A Turnpike St., North Andover, MA 01845, Contact: J. William Vitta, Phone: (508) 681-8711.

(b) *Approved Courses:*

Abatement Worker (Certified 3/18/89 to 4/15/89 **only**).
Abatement Worker Annual Review (Certified 3/18/89 to 4/15/89 **only**).
Contractor/Supervisor (Certified 3/18/89 to 4/15/89 **only**).
Contractor/Supervisor Annual Review (Certified 3/18/89 to 4/15/89 **only**).

(xxxi)(a) *Training Provider:* O'Brien & Gere Engineers, Inc.

Address: 1304 Buckley Rd., Syracuse, NY 13221, Contact: Edwin Tifft, Phone: (315) 451-4700.

(b) *Approved Courses:*

Inspector/Management Planner (Certified 11/7/88).
Project Designer (Certified 11/7/88).

(xxxii)(a) *Training Provider:* Quality Control Services, Inc.

Address: 10 Lowell Junction Rd., Andover, MA 01810, Contact: Ajay Pathak, Phone: (508) 475-0623.

(b) *Approved Courses:*

Abatement Worker (Certified 5/6/88).
Abatement Worker Annual Review (Certified 5/16/89).
Contractor/Supervisor (Certified 5/6/88).
Contractor/Supervisor Annual Review (Certified 5/16/89).

(xxxiii)(a) *Training Provider:* Safety Council of Western Massachusetts.

Address: 90 Berkshire Ave., Springfield, MA 01109, Contact: Tate Berkan, Phone: (413) 737-7908.

(b) *Approved Courses:*

Abatement Worker (Certified 6/21/88).
Abatement Worker Annual Review (Certified 6/21/89).

(xxxiv)(a) *Training Provider:* The Environmental Institute.

Address: 350 Franklin Rd., Suite 300, Marietta, GA 30067, Contact: Bill Ewing, Phone: (404) 425-2000.

(b) *Approved Courses:*

Contractor/Supervisor (Certified 10/28/88).
Contractor/Supervisor Annual Review (Certified 10/28/88).
Inspector/Management Planner (Certified 10/28/88).
Project Designer (Certified 10/28/88).

(xxxv)(a) *Training Provider:* Tufts University Asbestos Information Center.

Address: 474 Boston Ave., Medford, MA 02155, Contact: Anne Chabot, Phone: (617) 381-3531.

(b) *Approved Courses:*

Abatement Worker (Certified 3/16/88).
Abatement Worker Annual Review (Certified 3/16/89).
Contractor/Supervisor (Certified 3/16/88).
Contractor/Supervisor Annual Review (Certified 3/16/89).
Inspector/Management Planner (Certified 3/16/88).
Inspector/Management Planner Annual Review (Certified 3/16/89).
Project Designer (Certified 3/16/88).
Project Designer Annual Review (Certified 3/16/89).

(xxxvi)(a) *Training Provider:* University of Massachusetts Environmental Health & Safety.

Address: N. 414 Morrill Science Center, Amherst, MA 01003, Contact: Al Soreuseu, Phone: (413) 545-2682.

(b) *Approved Course:*

Abatement Worker Annual Review (Certified 10/3/89).

(xxxvii)(a) *Training Provider:* Weston-Atc, Inc.

Address: 1635 Pumphrey Ave., Auburn, AL 36830, Contact: Ron Thompson, Phone: (205) 826-6100.

(b) *Approved Courses:*

Contractor/Supervisor (Certified 5/25/89).
Contractor/Supervisor Annual Review (Certified 5/25/89).
Inspector/Management Planner (Certified 5/25/89).
Inspector/Management Planner Annual Review (Certified 5/25/89).
Project Designer (Certified 5/25/89).
Project Designer Annual Review (Certified 5/25/89).

(xxxviii)(a) *Training Provider:* Young Sales Corp.

Address: 1054 Central Industrial Drive, St. Louis, MO 63110, Contact: W. Todd McCane, Phone: (314) 771-3080.

(b) *Approved Course:*

Abatement Worker (Certified 6/13/89).

Michigan

(12)(a) *State Agency:* State of Michigan Dept. of Public Health, Address: 3500 North Logan, P.O. Box 30035, Lansing, MI 48909, Contact: Bill DeLiefde, Phone: (517) 335-8186.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 4/13/89).
Contractor/Supervisor (full from 4/13/89).
Inspector (full from 4/13/89).
Inspector/Management Planner (full from 4/13/89).
Project Designer (full from 4/13/89).

(i)(a) *Training Provider:* Aerospace America, Inc.

Address: P.O. Box 146, Bay City, MI 48707, Contact: Joseph P. Goldring, Phone: (517) 684-2121.

(b) *Approved Courses:*

Abatement Worker (Certified 5/16/90).
Abatement Worker Annual Review (Certified 4/26/90).
Contractor/Supervisor (Certified 5/16/90).
Contractor/Supervisor Annual Review (Certified 4/26/90).

(ii)(a) *Training Provider:* Alderink & Associates, Inc.

Address: 3221 3 Miles Rd., NW., Grand Rapids, MI 49504, Contact: David Lutheuhoff, Phone: (616) 791-0730.

(b) *Approved Courses:*

Abatement Worker (Certified 11/28/89).
Abatement Worker Annual Review (Certified 11/28/89).
Contractor/Supervisor (Certified 11/28/89).
Contractor/Supervisor Annual Review (Certified 11/28/89).

(iii)(a) *Training Provider:* Asbestos Management, Inc.

Address: 36700 S. Huron Rd., New Boston, MI 48164, Contact: LaDonna Slifco, Phone: (313) 961-6135.

(b) *Approved Courses:*

Abatement Worker (Certified 12/20/89).
Abatement Worker Annual Review (Certified 12/20/89).
Contractor/Supervisor (Certified 12/20/89).
Contractor/Supervisor Annual Review (Certified 12/20/89).
Inspector/Management Planner (Certified 12/20/89).
Inspector/Management Planner Annual Review (Certified 12/20/89).

(iv)(a) *Training Provider:* Asbestos Services Inc.

Address: 9028 Hills Rd., Baroda, MI 49101, Contact: Dennis W Calkins, Phone: (616) 422-2174.

(b) *Approved Courses:*

Abatement Worker (Certified 1/11/90).
Abatement Worker Annual Review (Certified 1/11/90).
Contractor/Supervisor (Certified 1/11/90).
Contractor/Supervisor Annual Review (Certified 1/11/90).

(v)(a) *Training Provider:* Asbestos Workers Local 25.

Address: 29200 Vasser, Livonia, MI 48152, Contact: Dan A. Somenauer, Phone: (313) 471-1007.

(b) *Approved Courses:*

Abatement Worker (Certified 4/25/90).
Abatement Worker Annual Review (Certified 4/25/90).
Contractor/Supervisor (Certified 7/12/90).
Contractor/Supervisor Annual Review (Certified 7/12/90).

(vi)(a) *Training Provider:* Asbestos Workers Local 47.

Address: 125 S. Michigan Ave., Room 217, Coldwater, MI 49036, Contact: LaVern Max Bowman, Phone: (517) 279-8054.

(b) *Approved Courses:*

Abatement Worker (Certified 3/20/90).
Abatement Worker Annual Review (Certified 3/20/90).

(vii)(a) *Training Provider:* BDN Industrial Hygiene Consultants.

Address: 8105 Valleywood Ln., Portage, MI 49002, Contact: Brent Bassett, Phone: (616) 329-1237.

(b) *Approved Courses:*

Abatement Worker (Certified 11/13/89).
Abatement Worker Annual Review (Certified 11/13/89).
Contractor/Supervisor (Certified 11/13/89).
Contractor/Supervisor Annual Review (Certified 11/13/89).
Inspector/Management Planner (Certified 12/14/89).
Inspector/Management Planner Annual Review (Certified 4/24/90).
Project Designer Annual Review (Certified 11/21/90).

(viii)(a) *Training Provider:* Barton Associates.

Address: 1265 Westport Rd., Ann Arbor, MI 48103, Contact: Sara Bassett, Phone: (313) 665-3681.

(b) *Approved Courses:*

Abatement Worker (Certified 1/19/90).
Abatement Worker Annual Review (Certified 4/5/90).
Contractor/Supervisor (Certified 9/18/89).
Contractor/Supervisor Annual Review (Certified 11/2/90).

(ix)(a) *Training Provider:* Bierlein Demolition.

Address: 2903 S. Graham Rd., Saginaw, MI 48603, Contact: Ramond E. Passeno, Phone: (517) 781-1810.

(b) *Approved Courses:*

Contractor/Supervisor (Certified 11/20/89).
Contractor/Supervisor Annual Review (Certified 11/20/90).

(x)(a) *Training Provider:* Clayton Environmental Conslt.

Address: 22345 Roethel Dr., Novi, MI 48050, Contact: Charlotte Heideman, Phone: (313) 344-1770.

(b) *Approved Courses:*

Inspector/Management Planner (Certified 2/9/90).
Inspector/Management Planner Annual Review (Certified 1/9/90).

(xi)(a) *Training Provider:* Clean Air Management, Inc.

Address: 39319 Plymouth Rd., Livonia, MI 48150, Contact: James Kukalis, Phone: (313) 462-0800.

(b) *Approved Courses:*

Abatement Worker (Certified 5/29/90).
Contractor/Supervisor (Certified 5/29/90).

(xii)(a) *Training Provider:* DeLisle Associates, LTD.

Address: 8225 Moorsbridge Rd., Portage, MI 49002, Contact: Mark DeLisle, Phone: (616) 327-8225.

(b) *Approved Courses:*

Abatement Worker (Certified 12/12/89).
Abatement Worker Annual Review (Certified 12/12/89).
Contractor/Supervisor (Certified 12/12/89).
Contractor/Supervisor Annual Review (Certified 12/12/89).
Inspector/Management Planner (Certified 12/12/89).
Inspector/Management Planner Annual Review (Certified 12/12/89).

(xiii)(a) *Training Provider:* EMU Corporate Services.

Address: 3075 Washtenaw Ave., Ypsilanti, MI 48197, Contact: Bertrand Ramsay, Phone: (313) 487-2259.

(b) *Approved Courses:*

Abatement Worker (Certified 1/5/90).
Abatement Worker Annual Review (Certified 11/1/89).
Contractor/Supervisor (Certified 1/5/90).
Contractor/Supervisor Annual Review (Certified 1/5/90).
Inspector/Management Planner (Certified 1/5/90).
Inspector/Management Planner Annual Review (Certified 1/5/90).

(xiv)(a) *Training Provider:* ENTELA Engineering Service.

Address: 4020 W. River Dr., Comstock Park, MI 49321, Contact: Bruce H. Connell, Phone: (616) 784-7774.

(b) *Approved Courses:*

Abatement Worker (Certified 9/26/89).
Abatement Worker Annual Review (Certified 12/14/89).
Contractor/Supervisor (Certified 9/26/89).
Contractor/Supervisor Annual Review (Certified 12/14/89).

(xv)(a) *Training Provider:* Environmental & Occupational, Consulting & Training.

Address: 3410 East Cork St., Kalamazoo, MI 49001, Contact: A. Clark Kahn, Phone: (616) 388-6085.

(b) *Approved Courses:*

Abatement Worker (Certified 11/14/89).
Abatement Worker Annual Review (Certified 11/14/89).
Contractor/Supervisor (Certified 11/14/89).
Contractor/Supervisor Annual Review (Certified 11/14/89).

(xvi)(a) *Training Provider:* Environmental Abatement System.

Address: 6416 Ellsworth Rd., Detroit, MI 48238, Contact: Farrell Davis, Phone: (313) 345-3154.

(b) *Approved Courses:*

Abatement Worker (Certified 4/25/90).
Abatement Worker Annual Review (Certified 4/25/90).
Contractor/Supervisor (Certified 4/25/90).
Contractor/Supervisor Annual Review (Certified 4/25/90).

(xvii)(a) *Training Provider:* Environmental Diversified Service.

Address: 24356 Sherwood, Centerline, MI 48015, Contact: Michael D. Berg, Phone: (313) 757-4800.

(b) *Approved Course:*

Abatement Worker (Certified 6/13/90).

(xviii)(a) *Training Provider:* Fibertec Inc.

Address: 700 Abbott Rd., East Lansing, MI 48823, Contact: Matthew H. Frisch, Phone: (517) 351-0345.

(b) *Approved Course:*

Contractor/Supervisor (Certified 10/4/89).

(xix)(a) *Training Provider:* G & H Contracting Assoc.

Address: 300 Acron St., Plainwell, MI 49080, Contact: Gregory G. Moe, Phone: (616) 685-1606.

(b) *Approved Courses:*

Abatement Worker (Certified 12/20/89).
Contractor/Supervisor (Certified 12/20/89).

(xx)(a) *Training Provider:* Hall-Kimbrell Environ Services.

Address: 4840 W. 15th St., Lawrence, KS 66044, Contact: Alice Hart, Phone: (800) 346-2860.

(b) *Approved Courses:*

Abatement Worker (Certified 4/2/90).
Abatement Worker Annual Review (Certified 4/2/90).
Contractor/Supervisor (Certified 4/2/90).
Contractor/Supervisor Annual Review (Certified 4/2/90).

(xxi)(a) *Training Provider:* Howard Abatement Inc.

Address: 25415 Glendale Ave., Redford, MI 48239, Contact: William R. Wyler, Phone: (313) 537-4974.

(b) *Approved Courses:*

Abatement Worker (Certified 5/29/90).
Contractor/Supervisor (Certified 5/29/90).

(xxii)(a) *Training Provider:* Industrial Environmental Consulting.

Address: 2875 Northwind, E. Lansing, MI 48823, Contact: Michael Tillotson, Phone: (517) 332-7026.

(b) *Approved Courses:*

Abatement Worker (Certified 1/2/90).
Abatement Worker Annual Review (Certified 1/2/90).
Contractor/Supervisor (Certified 1/2/90).
Contractor/Supervisor Annual Review (Certified 1/2/90).
Inspector/Management Planner (Certified 10/12/90).
Inspector/Management Planner Annual Review (Certified 1/2/90).

(xxiii)(a) *Training Provider:* Jensen Environmental & Training.

Address: 651 Fisher Rd., Grosse Pointe, MI 48230, Contact: Leonard L. Jensen, Phone: (313) 882-2021.

(b) *Approved Courses:*

Abatement Worker (Certified 5/7/90).
Abatement Worker Annual Review (Certified 8/25/89).
Contractor/Supervisor (Certified 5/7/90).
Contractor/Supervisor Annual Review (Certified 8/25/89).
Inspector/Management Planner Annual Review (Certified 6/25/90).
Project Designer Annual Review (Certified 12/21/90).

(xxiv)(a) *Training Provider:* Kemron Environmental Services.

Address: 32740 Northwestern Hwy., Farmington Hills, MI 48018, Contact: Henry D. Baier, Phone: (313) 626-2426.

(b) *Approved Courses:*

Abatement Worker (Certified 1/22/90).
Abatement Worker Annual Review (Certified 1/22/90).
Contractor/Supervisor (Certified 1/22/90).
Contractor/Supervisor Annual Review (Certified 1/22/90).
Inspector (Certified 3/15/90).
Inspector Annual Review (Certified 3/15/90).

(xxv)(a) *Training Provider:* Manage Right Asbestos.

Address: 314 W. Genesee Ave., Saginaw, MI 48602, Contact: Mary Margaret Brown, Phone: (517) 753-9290.

(b) *Approved Courses:*

Abatement Worker (Certified 1/2/90).
Contractor/Supervisor (Certified 1/2/90).

(xxvi)(a) *Training Provider:* Michigan Laborers' Training.

Address: 11155 S. Beardslee Rd., Perry, MI 48872, Contact: Edwin H. McDonald, Phone: (517) 625-4919.

(b) *Approved Courses:*

Abatement Worker (Certified 9/21/90).
Abatement Worker Annual Review (Certified 9/21/90).
Contractor/Supervisor (Certified 9/21/90).
Contractor/Supervisor Annual Review (Certified 9/21/90).

(xxvii)(a) *Training Provider:* NTH Consultants, Ltd.

Address: 38955 Hills Tech Drive, Farmington Hills, MI 48331, Contact: Vickie Jo Armstrong, Phone: (313) 553-6300.

(b) *Approved Courses:*

Abatement Worker (Certified 9/14/90).
Abatement Worker Annual Review (Certified 8/6/90).
Contractor/Supervisor (Certified 12/7/90).
Contractor/Supervisor Annual Review (Certified 12/7/90).

(xxviii)(a) *Training Provider:* National Asbestos Abatement.

Address: 3080 N. Center Rd., Flint, MI 48506, Contact: James Sheaffer, Phone: (313) 736-7911.

(b) *Approved Courses:*

Abatement Worker (Certified 3/20/90).
Abatement Worker Annual Review (Certified 3/20/90).
Contractor/Supervisor (Certified 3/20/90).
Contractor/Supervisor Annual Review (Certified 3/20/90).

(xxix)(a) *Training Provider:* National Training Fund/Workers Institute.

Address: 1126 Sixteenth St., NW., Washington, DC 20036, Contact: Scott Schneider, Phone: (202) 887-1980.

(b) *Approved Courses:*

Abatement Worker (Certified 6/21/90).
Abatement Worker Annual Review (Certified 6/21/90).
Contractor/Supervisor (Certified 6/21/90).
Contractor/Supervisor Annual Review (Certified 6/21/90).

(xxx)(a) *Training Provider:* Northern Safety Consultants.

Address: 1406 Lincoln Ave., Marquette, MI 49855, Contact: Christopher Baker, Phone: (906) 228-5161.

(b) *Approved Courses:*

Abatement Worker (Certified 3/14/90).
Abatement Worker Annual Review (Certified 3/14/90).
Contractor/Supervisor (Certified 3/14/90).
Contractor/Supervisor Annual Review (Certified 3/14/90).
Project Designer (Certified 3/14/90).
Project Designer Annual Review (Certified 3/14/90).

(xxxi)(a) *Training Provider:* Nova Environmental, Inc.

Address: 5340 Plymouth Rd., Suite 210, Ann Arbor, MI 48105, Contact: Kary S. Amin, Phone: (313) 930-0995.

(b) *Approved Courses:*

Abatement Worker Annual Review (Certified 4/13/90).
Contractor/Supervisor (Certified 9/26/90).
Contractor/Supervisor Annual Review (Certified 1/2/90).
Inspector/Management Planner (Certified 9/14/90).
Inspector/Management Planner Annual Review (Certified 12/14/89).

(xxxii)(a) *Training Provider:* Onikepo Inc.

Address: 3843 W. Outer Dr., Detroit, MI 48221, Contact: Constance S. Molette, Phone: (313) 862-9321.

(b) *Approved Courses:*

Abatement Worker (Certified 5/7/90).
Abatement Worker Annual Review (Certified 5/7/90).
Contractor/Supervisor (Certified 5/7/90).

(xxxiii)(a) *Training Provider:* SE MI Coalition on Occ Safety.

Address: 2727 Second Ave., Detroit, MI 48201, Contact: Susan V. Hayes, Phone: (313) 961-3345.

(b) *Approved Courses:*

Abatement Worker (Certified 11/28/89).
Abatement Worker Annual Review (Certified 11/28/89).

(xxxiv)(a) *Training Provider:* Sierra Analytical & Consulting.

Address: 237 Dino Dr., Ann Arbor, MI 48103, Contact: Randy Gamble, Phone: (313) 662-1155.

(b) *Approved Courses:*

Abatement Worker (Certified 3/27/90).
Abatement Worker Annual Review (Certified 3/14/90).
Contractor/Supervisor (Certified 12/18/89).
Contractor/Supervisor Annual Review (Certified 11/1/90).
Inspector (Certified 6/25/90).

(xxxv)(a) *Training Provider:* Summit Abatement Contracting.

Address: 7255 Tower Rd., Battle Creek, MI 49017, Contact: William Morris, Phone: (616) 968-4242.

(b) *Approved Courses:*

Abatement Worker (Certified 11/22/89).
Abatement Worker Annual Review (Certified 11/22/89).
Contractor/Supervisor (Certified 11/22/89).
Contractor/Supervisor Annual Review (Certified 11/22/89).

(xxxvi)(a) *Training Provider:* Testing Engineers & Consultants.

Address: 1333 Rochester Rd., Troy, MI 48099, Contact: Karen Brunch, Phone: (313) 588-6200.

(b) *Approved Courses:*

Abatement Worker (Certified 7/13/90).
Contractor/Supervisor (Certified 12/1/89).
Contractor/Supervisor Annual Review (Certified 6/28/90).
Inspector/Management Planner (Certified 11/13/89).
Inspector/Management Planner Annual Review (Certified 11/13/89).

(xxxvii)(a) *Training Provider:* The Brand Companies, Inc.

Address: 1420 Renaissance Dr., Park Ridge, IL 60068, Contact: Dolores A. Lott, Phone: (708) 298-1200.

(b) *Approved Courses:*

Contractor/Supervisor (Certified 6/27/90).
Contractor/Supervisor Annual Review (Certified 6/27/90).

(xxxviii)(a) *Training Provider:* The Environmental Management.

Address: 314 S. State Ave., Indianapolis, IN 46201, Contact: Joseph Parker, Phone: (317) 269-3618.

(b) *Approved Courses:*

Abatement Worker (Certified 5/16/90 to 12/28/90 only).
Abatement Worker Annual Review (Certified 5/16/90 to 12/28/90 only).

(xxxix)(a) *Training Provider:* Thermico Inc.

Address: 3405 Centennial Dr., Midland, MI 48640, Contact: Kevin Otis, Phone: (517) 496-2927.

(b) *Approved Courses:*

Abatement Worker (Certified 4/2/90).
Abatement Worker Annual Review (Certified 4/24/90).
Contractor/Supervisor (Certified 4/25/90).
Contractor/Supervisor Annual Review (Certified 4/25/90).

(xl)(a) *Training Provider:* Trust Thermal Systems.

Address: 13109 Schavey Rd., Suite 2 Dewitt, Dewitt, MI 48820, Contact: Thomas J. Lowe, Phone: (517) 669-8834.

(b) *Approved Courses:*

Abatement Worker (Certified 1/8/90).
Abatement Worker Annual Review (Certified 1/8/90).
Contractor/Supervisor (Certified 1/8/90).
Contractor/Supervisor Annual Review (Certified 1/8/90).

(xli)(a) *Training Provider:* Wonder Makers, Inc.

Address: 3101 Darmo, Kalamaoo, MI 49008, Contact: Michael Pinto, Phone: (616) 382-4154.

(b) *Approved Courses:*

Abatement Worker (Certified 11/20/89).
Abatement Worker Annual Review (Certified 11/20/89).
Contractor/Supervisor (Certified 11/20/89).
Contractor/Supervisor Annual Review (Certified 11/20/89).
Inspector/Management Planner (Certified 11/20/89).
Inspector/Management Planner Annual Review (Certified 11/20/89).

Minnesota

(13)(a) *State Agency:* Minnesota Dept. of Health, Division of Environmental Health, Section of Occupational Health, Address: 925 Southeast Delaware St., P.O. Box 59040, Minneapolis, MN 55459-0040, Contact: William A. Fetzner, Phone: (612) 627-5097.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 10/3/88).
Contractor/Supervisor (full from 10/3/88).

(i)(a) *Training Provider:* Applied Environmental Sciences, Inc. (AES).

Address: Minneapolis Business & Tec. Center, Box 220, 511 11th Ave. South, Minneapolis, MN 55415, Contact: Franklin H. Dickson, Phone: (612) 339-5559.

(b) *Approved Courses:*

Abatement Worker (Certified 1/16/90).
Abatement Worker Annual Review (Certified 12/11/89).
Contractor/Supervisor (Certified 1/16/90).
Contractor/Supervisor Annual Review (Certified 12/11/89).

(ii)(a) *Training Provider:* Asbestos Technology & Training, Inc.

Address: 840 Hampden Ave., Suite 110 St. Paul, MN 55114, Contact: James Risimini, Phone: (612) 649-0043.

(b) *Approved Courses:*

Abatement Worker Annual Review (Certified 12/29/89).
Contractor/Supervisor Annual Review (Certified 12/29/89).

(iii)(a) *Training Provider:* Hall-Kimbrell Environmental Services.

Address: 4840 West 15th St., Lawrence, KS 66049, Contact: Alice M. Hartz, Phone: (800) 346-2860.

(b) *Approved Courses:*

Abatement Worker (Certified 1/12/90).
Abatement Worker Annual Review (Certified 1/12/90).
Contractor/Supervisor (Certified 1/12/90).
Contractor/Supervisor Annual Review (Certified 1/12/90).

(iv)(a) *Training Provider:* Ilse Engineering Inc.

Address: 205 Board of Trade Building, Duluth, MN 55802, Contact: John F. Ilse, Phone: (218) 720-3526.

(b) *Approved Courses:*

Contractor/Supervisor (Certified 1/23/90).
Contractor/Supervisor Annual Review (Certified 1/23/90).

(v)(a) *Training Provider:* Institute for Environmental Assessment, Inc.

Address: 433 Jackson St., Anoka, MN 55303, Contact: Jesse Lee, Phone: (612) 323-9770.

(b) *Approved Courses:*

Abatement Worker (Certified 11/12/89).
Abatement Worker Annual Review (Certified 11/12/89).
Contractor/Supervisor (Certified 11/12/89).
Contractor/Supervisor Annual Review (Certified 11/12/89).

(vi)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local No. 34.

Address: 708 South 10th St., Minneapolis, MN 55404, Contact: Lee Houske, Phone: (612) 332-3216.

(b) *Approved Courses:*

Abatement Worker (Certified 11/2/89).
Abatement Worker Annual Review (Certified 6/27/89).
Contractor/Supervisor (Certified 11/2/89).
Contractor/Supervisor Annual Review (Certified 6/27/89).

(vii)(a) *Training Provider:* Laborers District Council of Minnesota and North Dakota.

Address: 1598 Carroll Ave., St. Paul, MN 55104, Contact: Kenneth J. Lynch, Phone: (612) 646-7981.

(b) *Approved Courses:*

Abatement Worker (Certified 12/17/90).
Abatement Worker Annual Review (Certified 8/17/90).
Contractor/Supervisor Annual Review (Certified 8/17/90).

(viii)(a) *Training Provider:* Mayhew Environmental Training Associates, Inc. (META).

Address: P.O. Box 1961, Lawrence, KS 66044, Contact: Brad Mayhew or Betty Fenstemaker, Phone: (800) 444-6382.

(b) *Approved Courses:*

Abatement Worker (Certified 3/5/90).
Abatement Worker Annual Review (Certified 3/5/90).
Contractor/Supervisor (Certified 3/5/90).
Contractor/Supervisor Annual Review (Certified 3/5/90).

(ix)(a) *Training Provider:* McNeil Environmental, Inc.

Address: 755 East Cliff Rd., Burnsville, MN 55337, Contact: Philip Allmon, Phone: (612) 890-3452.

(b) *Approved Courses:*

Abatement Worker Annual Review (Certified 10/22/89).
Contractor/Supervisor Annual Review (Certified 10/22/89).

(x)(a) *Training Provider:* Midwest Center for Occupational Health & Safety.

Address: 640 Jackson St., St. Paul, MN 55101, Contact: Jeanne F. Ayers, Phone: (612) 221-3992.

(b) *Approved Courses:*

Abatement Worker (Certified 1/22/90).
Abatement Worker Annual Review (Certified 1/22/90).
Contractor/Supervisor (Certified 1/22/90).
Contractor/Supervisor Annual Review (Certified 11/14/89).

(xi)(a) *Training Provider:* Midwest Consultants, Inc.

Address: 219 23rd St. North, Box 1708, Fargo, ND 58102, Contact: Jerry Day, Phone: (701) 280-2286.

(b) *Approved Courses:*

Abatement Worker (Certified 4/25/90).
Abatement Worker Annual Review (Certified 4/25/90).

(xii)(a) *Training Provider:* Nova Environmental Services, Inc.

Address: Suite 420, Hazeltine Gates, 1107 Hazeltine Blvd., Chaska, MN 55318, Contact: Deborah S. Green, Phone: (612) 448-9393.

(b) *Approved Courses:*

Abatement Worker (Certified 11/20/89).
Abatement Worker Annual Review (Certified 11/20/89).
Contractor/Supervisor (Certified 11/20/89).
Contractor/Supervisor Annual Review (Certified 11/20/89).

(xiii)(a) *Training Provider:* Southwest Technical College.

Address: Continuing Education, SW State University, FT 103, Marshall, MN 53103, Contact: Carole Treadway, Phone: (507) 537-7396.

(b) *Approved Courses:*

Abatement Worker (Certified 4/27/89).
Abatement Worker Annual Review (Certified 7/24/89).
Contractor/Supervisor (Certified 4/27/89).
Contractor/Supervisor Annual Review (Certified 7/24/89).

(xiv)(a) *Training Provider:* The Brand Companies, Inc.

Address: 1420 Renaissance Dr., Park Ridge, IL 60068, Contact: Dolores A. Lott, Phone: (708) 298-1200.

(b) *Approved Courses:*

Contractor/Supervisor (Certified 5/30/90).
Contractor/Supervisor Annual Review (Certified 5/30/90).

(xv)(a) *Training Provider:* Twin City Area Carpenter's Joint Apprenticeship Committee/United Brotherhood of Carpenters & Joiners.

Address: 2203 County Rd. C2, Roseville, MN 55113, Contact: Gerald W. Setterholm, Phone: (612) 633-8096.

(b) *Approved Courses:*

Abatement Worker (Certified 6/14/89).
Abatement Worker Annual Review (Certified 3/19/90).
Contractor/Supervisor (Certified 6/14/89).
Contractor/Supervisor Annual Review (Certified 3/19/90).

(xvi)(a) *Training Provider:* University of North Dakota, Occupational Safety and Environmental Health Office.

Address: University Station, Box 8275, Grand Forks, ND 58202, Contact: Dale P. Patrick, Phone: (701) 777-3341.

(b) *Approved Courses:*

Abatement Worker (Certified 7/5/91).
Abatement Worker Annual Review (Certified 7/5/91).
Contractor/Supervisor (Certified 7/5/91).
Contractor/Supervisor Annual Review (Certified 7/5/91).

Montana

(14)(a) *State Agency:* Department of Health & Environmental Sciences, Address: Cogswell Building, Helena, MT 59620, Contact: Adrian C. Howe, Phone: (406) 444-3671.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 5/16/90).
Contractor/Supervisor (full from 5/16/90).

Inspector/Management Planner (full from 5/16/90).
Project Designer (full from 5/16/90).

(i)(a) *Training Provider:* Bison Engineering.

Address: 30 5 Ewing, Helena, MT 59601, Contact: Don Hurst, Phone: (406) 442-5768.

(b) *Approved Courses:*

Abatement Worker (Certified 4/24/90).
Abatement Worker Annual Review (Certified 4/24/90).
Contractor/Supervisor (Certified 4/24/90).
Contractor/Supervisor Annual Review (Certified 4/24/90).

(ii)(a) *Training Provider:* Black Hills Special Services Cooperative.

Address: P.O. Box 218, Sturgis, SD 57785, Contact: Randy Morris, Phone: (605) 347-4467.

(b) *Approved Courses:*

Abatement Worker (Certified 8/8/90).
Contractor/Supervisor (Certified 10/5/90).

(iii)(a) *Training Provider:* Brand Companies, Inc.

Address: 1420 Renaissance Dr., Park Ridge, IL 60068, Contact: Dolores Lott, Phone: (708) 298-1200.

(b) *Approved Course:*

Abatement Worker (Certified 1/19/90).

(iv)(a) *Training Provider:* Chen-Northern, Inc.

Address: 600 South 25th St., Billings, MT 59601, Contact: Kathy Smit, Phone: (406) 248-9161.

(b) *Approved Courses:*

Abatement Worker (Certified 1/24/90).
Abatement Worker Annual Review (Certified 2/5/90).
Contractor/Supervisor (Certified 1/24/90).
Contractor/Supervisor Annual Review (Certified 2/5/90).

(v)(a) *Training Provider:* Georgia Tech Research Institute.

Address: Georgia Institute of Technology, Atlanta, GA 30332, Contact: Margaret Ojala, Phone: (404) 894-8078.

(b) *Approved Courses:*

Contractor/Supervisor (Certified 10/5/90).
Contractor/Supervisor Annual Review (Certified 10/5/90).

(vi)(a) *Training Provider:* Hall-Kimbrell.

Address: 3333 Quebec St., Suite 4060, Denver, CO 80207, Contact: Perry Ford, Phone: (800) 346-2860.

(b) *Approved Courses:*

Abatement Worker (Certified 4/24/90).
Abatement Worker Annual Review (Certified 4/24/90).
Contractor/Supervisor (Certified 4/24/90).
Contractor/Supervisor Annual Review (Certified 4/24/90).
Inspector/Management Planner (Certified 10/1/90).
Inspector/Management Planner Annual Review (Certified 2/21/90).
Project Designer (Certified 4/26/90).
Project Designer Annual Review (Certified 2/21/90).

(vii)(a) *Training Provider:* Laborer's AGC, Training Program of Montana.

Address: RR2, Box 221-D, Helena, MT 59601, Contact: Dan Holland, Phone: (406) 442-9964.

(b) *Approved Courses:*

Abatement Worker (Certified 1/17/90).
Abatement Worker Annual Review (Certified 1/17/90).

(viii)(a) *Training Provider:* Montana State Council of Carpenters.

Address: P.O. Box 821, Helena, MT 59624, Contact: Bruce Morris, Phone: (406) 442-5256.

(b) *Approved Courses:*

Abatement Worker (Certified 3/1/90).
Abatement Worker Annual Review (Certified 3/1/90).

(ix)(a) *Training Provider:* Rocky Mountain Center.

Address: University of Utah, Bldg. 512, Salt Lake City, UT 84112, Contact: Jeff Lee, Phone: (801) 581-5710.

(b) *Approved Courses:*

Contractor/Supervisor (Certified 6/19/90).
Contractor/Supervisor Annual Review (Certified 6/27/90).
Inspector/Management Planner (Certified 7/27/90).
Inspector/Management Planner Annual Review (Certified 7/27/90).

Nebraska

(15)(a) *State Agency:* Department of Health Division of Asbestos Control, Address: 301 Centennial Mall South, P.O. Box 95007, Lincoln, NE 68509-5007, Contact: Jacqueline M. Fiedler, Phone: (402) 471-2541.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 5/9/89).
Contractor/Supervisor (full from 5/9/89).
Inspector (full from 5/9/89).
Inspector/Management Planner (full from 5/9/89).
Project Designer (full from 5/9/89).

(i)(a) *Training Provider:* Environmental Salvage, LTD.

Address: 4930 South 23rd St., Omaha, NE 68107, Contact: Lynn Knudtson, Phone: (402) 733-2595.

(b) *Approved Courses:*

Abatement Worker (Certified 3/14/89).
Abatement Worker Annual Review (Certified 8/3/89).
Contractor/Supervisor (Certified 3/14/89).
Contractor/Supervisor Annual Review (Certified 8/3/89).

(ii)(a) *Training Provider:* Institute for Environmental Assessment.

Address: 433 Jackson St., Anoka, MN 55303, Contact: Jesse Lee, Phone: (800) 233-9513.

(b) *Approved Course:*

Contractor/Supervisor Annual Review (Certified 12/19/89).

(iii)(a) *Training Provider:* Insulators & Asbestos Workers Midwest States Health & Training Council.

Address: Route 2, Wahoo, NE 68066, Contact: Ray Richmond, Phone: (402) 443-4810.

(b) *Approved Courses:*

Abatement Worker (Certified 5/22/89).
Abatement Worker Annual Review (Certified 4/12/90).
Contractor/Supervisor (Certified 5/22/89).
Contractor/Supervisor Annual Review (Certified 11/27/89).

(iv)(a) *Training Provider:* National Asbestos Council.

Address: 1777 Northeast Expressway, Suite 150, Atlanta, GA 30329, Contact: Tina Smith, Phone: (404) 633-2622.

(b) *Approved Courses:*

Abatement Worker (Certified 1/31/90).
Abatement Worker Annual Review (Certified 12/15/89).

(v)(a) *Training Provider:* Safety and Health Council of Greater Omaha.

Address: 2513 St. Mary's Avenue, Omaha, NE 68105, Contact: Kay Farrell, Phone: (402) 345-1067.

(b) *Approved Courses:*

Abatement Worker Annual Review (Certified 10/12/90).
Contractor/Supervisor Annual Review (Certified 10/16/90).

New Jersey

(16)(a) *State Agency:* State of New Jersey Dept. of Health, Address: CN 360, Trenton, NJ 08625-0360, Contact: James A. Brownlee, Phone: (609) 984-2193.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 6/18/85).
Contractor/Supervisor (full from 6/18/85).

(i)(a) *Training Provider:* A & S Training School, Inc.

Address: 99 South Cameron St., Harrisburg, PA 17101, Contact: Robert Bradshaw or Robyn Brunson, Phone: (717) 257-1360.

(b) *Approved Courses:*

Abatement Worker (Certified 5/20/85).
Contractor/Supervisor (Certified 5/20/85).

(ii)(a) *Training Provider:* Alternative Ways, Inc.

Address: 100 Essex Ave., Bellmawr, NJ 08031, Contact: Donna Weiss or John Luxford, Phone: (609) 933-3300.

(b) *Approved Courses:*

Abatement Worker (Certified 4/25/85).
Abatement Worker Annual Review (Certified 3/15/90).
Contractor/Supervisor (Certified 4/25/85).
Contractor/Supervisor Annual Review (Certified 3/15/90).

(iii)(a) *Training Provider:* Asbestos Abatement Council, AWCI.

Address: 1600 Cameron St., Alexandria, VA 22314-2705, Contact: Carol Pacquin, Phone: (703) 684-2924.

(b) *Approved Courses:*

Abatement Worker (Certified 6/17/87 to 9/28/89 **only**).
Contractor/Supervisor (Certified 6/17/87 to 9/28/89 **only**).

(iv)(a) *Training Provider:* Asbestos Training Academy, Inc. - NJ.

Address: 218 Cooper Center, Pennsauken, NJ 08109, Contact: Joseph Bower, Phone: (609) 488-9200.

(b) *Approved Courses:*

Abatement Worker (Certified 5/1/85).
Abatement Worker Annual Review (Certified 6/6/90).
Contractor/Supervisor (Certified 5/1/85).
Contractor/Supervisor Annual Review (Certified 6/6/90).

(v)(a) *Training Provider:* Asbestos Training Academy, Inc. - NY.

Address: 315 West 36th St., 9th Fl., New York, NY 10018, Contact: Richard Green or Charlotte Hicks, Phone: (212) 971-0370.

(b) *Approved Courses:*

Abatement Worker (Certified 9/20/88 to 9/19/90 **only**).
Contractor/Supervisor (Certified 9/20/88 to 9/19/90 **only**).

(vi)(a) *Training Provider:* Asbestos Training Institute, Inc.

Address: 47 West 13th St., 2nd Floor, New York, NY 10011, Contact: Jean Bodman or Ron Rominski, Phone: (212) 206-7019.

(b) *Approved Courses:*

Abatement Worker (Certified 3/4/87).
Abatement Worker Annual Review (Certified 5/30/90).
Contractor/Supervisor (Certified 3/4/87).
Contractor/Supervisor Annual Review (Certified 5/30/90).

(vii)(a) *Training Provider:* BCM Eastern, Inc.

Address: One Plymouth Meeting Mall, Plymouth Meeting, PA 19462, Contact: R. Ferguson or C. Sterchak, Phone: (215) 825-3800.

(b) *Approved Courses:*

Abatement Worker (Certified 6/7/87 to 12/13/89 **only**).
Contractor/Supervisor (Certified 6/7/87 to 12/13/89 **only**).

(viii)(a) *Training Provider:* Building Laborers of N.J. - Training Center.

Address: P.O. Box 163, Jamesburg, NJ 08831, Contact: Emmanuel Riggi or Pat Collura, Phone: (201) 521-0200.

(b) *Approved Courses:*

Abatement Worker (Certified 7/19/85).
Abatement Worker Annual Review (Certified 12/5/89).
Contractor/Supervisor (Certified 7/19/85).
Contractor/Supervisor Annual Review (Certified 12/5/89).

(ix)(a) *Training Provider:* Drexel University, Office of Continuing Education.

Address: 32nd & Chestnut Sts., Philadelphia, PA 19104, Contact: Robert T. Ross or Rita Karmiol, Phone: (215) 895-2156.

(b) *Approved Courses:*

Abatement Worker (Certified 4/13/88).
Abatement Worker Annual Review (Certified 7/13/90).
Contractor/Supervisor (Certified 4/13/88).
Contractor/Supervisor Annual Review (Certified 7/13/90).

(x)(a) *Training Provider:* E.I. DuPont DeNemours & Co.

Address: Chamber Works, Deepwater, NJ 08023, Contact: Jeffery Thomason or Jayne Lane, Phone: (609) 540-2434.

(b) *Approved Courses:*

Abatement Worker (Certified 5/1/86).
Abatement Worker Annual Review (Certified 6/12/89).
Contractor/Supervisor (Certified 5/1/86).
Contractor/Supervisor Annual Review (Certified 6/12/89).

(xi)(a) *Training Provider:* Hazard Management Division of Curtin Management Consultants, Inc.

Address: 200 Smith St., Keasbey, NJ 08832, Contact: Daniel Curtin or Lori Abrams, Phone: (201) 738-9700.

(b) *Approved Courses:*

Abatement Worker (Certified 6/3/87).
Contractor/Supervisor (Certified 6/3/87).

(xii)(a) *Training Provider:* Hunter College Asbestos Training Center.

Address: c/o Carpenters Union-No. 455, 1931 Route 22 West, Bound Brook, NJ 08805-1519, Contact: Jack Caravanos or Joseph Marino, Phone: (201) 526-1116.

(b) *Approved Courses:*

Abatement Worker (Certified 5/23/85).
Contractor/Supervisor (Certified 5/23/85).

(xiii)(a) *Training Provider:* IT Corporation.

Address: 17461 Derian Ave., Suite 190, Irvine, CA 92714, Contact: Keith Soesbe, Phone: (714) 261-6441.

(b) *Approved Courses:*

Abatement Worker (Certified 8/29/85 to 9/13/90 **only**).
Contractor/Supervisor (Certified 8/29/85 to 9/13/90 **only**).

(xiv)(a) *Training Provider:* Kaselaan & D'Angelo Associates - NJ.

Address: 515 Grove St., Haddon Heights, NJ 08035, Contact: Jim Capritti or Patricia Cancglin, Phone: (609) 547-6500.

(b) *Approved Courses:*

Abatement Worker (Certified 5/8/85).
Abatement Worker Annual Review (Certified 12/5/89).
Contractor/Supervisor (Certified 5/8/85).
Contractor/Supervisor Annual Review (Certified 12/5/89).

(xv)(a) *Training Provider:* Kaselaan & D'Angelo Associates - NY.

Address: 220 5th Ave; 17th Floor, New York, NY 10001, Contact: L. Fredericks or M. Cox-Abdalla, Phone: (212) 216-6340.

(b) *Approved Courses:*

Abatement Worker (Certified 8/28/89).
Contractor/Supervisor (Certified 8/28/89).

(xvi)(a) *Training Provider:* Local Union No. 14.

Address: 6513 Bustleton Ave., Philadelphia, PA 19149, Contact: James Aikens or Lewis Fitzgerald, Phone: (215) 533-0395.

(b) *Approved Courses:*

Abatement Worker (Certified 8/9/85).
Abatement Worker Annual Review (Certified 11/1/89).
Contractor/Supervisor (Certified 8/9/85).
Contractor/Supervisor Annual Review (Certified 11/1/89).

(xvii)(a) *Training Provider:* Local Union No. 32.

Address: 870 Broadway, Newark, NJ 07104, Contact: Paul Ielmini or John Dwyer, Phone: (201) 485-3626.

(b) *Approved Courses:*

Abatement Worker (Certified 5/8/87).
Abatement Worker Annual Review (Certified 8/14/89).
Contractor/Supervisor (Certified 5/8/87).
Contractor/Supervisor Annual Review (Certified 8/14/89).

(xviii)(a) *Training Provider:* Local Union No. 42.

Address: 1188 River Rd., New Castle, DE 19720, Contact: Joseph Noble, Phone: (302) 328-4203.

(b) *Approved Courses:*

Abatement Worker (Certified 10/30/85).
Abatement Worker Annual Review (Certified 8/23/90).
Contractor/Supervisor (Certified 10/30/85).
Contractor/Supervisor Annual Review (Certified 8/23/90).

(xix)(a) *Training Provider:* Local Union No. 89.

Address: 2733 Nottingham Way, Trenton, NJ 08619, Contact: Charles DaBronzo or John DaBronzo, Phone: (609) 587-0092.

(b) *Approved Courses:*

Abatement Worker (Certified 5/13/86).
Abatement Worker Annual Review (Certified 11/27/89).
Contractor/Supervisor (Certified 5/13/86).
Contractor/Supervisor Annual Review (Certified 11/27/89).

(xx)(a) *Training Provider:* Mid-Atlantic Asbestos Training Center UMDNJ.

Address: 45 Knightsbridge Rd., Piscataway, NJ 08854, Contact: Lee Laustsen or Doris Daneluk, Phone: (201) 463-5062.

(b) *Approved Courses:*

Abatement Worker (Certified 7/1/86).
Abatement Worker Annual Review (Certified 1/17/90).
Contractor/Supervisor (Certified 7/1/86).
Contractor/Supervisor Annual Review (Certified 1/17/90).

(xxi)(a) *Training Provider:* NDI Training Institute.

Address: 7050 Kaighn Ave., Pennsauken, NJ 08109, Contact: J. Rodney Walton or John O'Brien, Phone: (609) 663-5042.

(b) *Approved Courses:*

Abatement Worker (Certified 9/13/86).
Contractor/Supervisor (Certified 9/13/86).

(xxii)(a) *Training Provider:* National Asbestos Council Training Dept.

Address: 1777 Northeast Expressway, Suite 150, Atlanta, GA 30329, Contact: Raymond McQueen, Phone: (404) 633-2622.

(b) *Approved Courses:*

Abatement Worker (Certified 1/13/87 to 10/3/90 **only**).
Contractor/Supervisor (Certified 1/13/87 to 10/3/90 **only**).

(xxiii)(a) *Training Provider:* National Asbestos Training Institute.

Address: 1776 Bloomsbury Ave., Ocean, NJ 07712, Contact: Doris Adler or Lisa Criscuolo, Phone: (201) 918-0610.

(b) *Approved Courses:*

Abatement Worker (Certified 5/3/85).
Abatement Worker Annual Review (Certified 8/14/89).
Contractor/Supervisor (Certified 5/3/85).
Contractor/Supervisor Annual Review (Certified 8/14/89).

(xxiv)(a) *Training Provider:* National Institute on Abatement Sciences and Technology.

Address: 114 West State St., P.O. Box 1780, Trenton, NJ 08607, Contact: Glenn Phillips, Phone: (800) 422-2836.

(b) *Approved Courses:*

Abatement Worker (Certified 1/16/88 to 10/24/89 **only**).
Contractor/Supervisor (Certified 1/16/88 to 10/24/89 **only**).

(xxv)(a) *Training Provider:* National Training Fund/Workers Institute for Safety & Health (WISH).

Address: 1126 16th St., NW., Washington, DC 20036, Contact: Scott Schneider or Matthew Gillen, Phone: (202) 887-1980.

(b) *Approved Courses:*

Abatement Worker (Certified 3/31/89).
Contractor/Supervisor (Certified 3/31/89).

(xxvi)(a) *Training Provider:* Northeastern Analytical Corporation.

Address: 4 Stow Rd., Marlton, NJ 08053, Contact: R. Holwitt or M. Dutkiewicz, Phone: (609) 985-8000.

(b) *Approved Courses:*

Abatement Worker (Certified 5/20/85).
Abatement Worker Annual Review (Certified 6/30/89).
Contractor/Supervisor (Certified 5/20/85).
Contractor/Supervisor Annual Review (Certified 6/30/89).

(xxvii)(a) *Training Provider:* Princeton Testing Laboratory.

Address: 3490 U.S. Rte. 1, Princeton, NJ 08540-3108, Contact: Charles Schneekloth, Phone: (609) 452-9050.

(b) *Approved Courses:*

Abatement Worker (Certified 5/8/85).
Abatement Worker Annual Review (Certified 6/14/89).
Contractor/Supervisor (Certified 5/8/85).
Contractor/Supervisor Annual Review (Certified 6/14/89).

(xxviii)(a) *Training Provider:* Temple University Asbestos Center.

Address: CECSA, 12th & Norris St., Philadelphia, PA 19122, Contact: Melvin Benarde or Diane Dymski, Phone: (215) 787-8546.

(b) *Approved Courses:*

Abatement Worker (Certified 11/24/87).
Abatement Worker Annual Review (Certified 10/25/90).
Contractor/Supervisor (Certified 11/24/87).
Contractor/Supervisor Annual Review (Certified 10/25/90).

(xxix)(a) *Training Provider:* White Lung Association - NY.

Address: 12 Warren St., 4th Floor, New York, NY 10007, Contact: Nelson Helu or Barbara Zeluck, Phone: (212) 619-2270.

(b) *Approved Courses:*

Abatement Worker (Certified 9/21/88 to 12/21/89 **only**).
Contractor/Supervisor (Certified 9/28/88 to 12/21/89 **only**).

(xxx)(a) *Training Provider:* White Lung Association of NJ.

Address: 901 Broad St., 2nd Floor, Newark, NJ 07102, Contact: Myles O'Malley or Gregory Camacho, Phone: (201) 824-2623.

(b) *Approved Courses:*

Abatement Worker (Certified 5/21/85).
Abatement Worker Annual Review (Certified 10/25/90).
Contractor/Supervisor (Certified 5/21/85).
Contractor/Supervisor Annual Review (Certified 10/25/90).

New York

(17)(a) *State Agency:* Department of Health, Address: Asbestos Safety Training Program, Bureau of Occupational Health, II University Place, Room 312, Albany, NY 12203-3313, Contact: George R. Estel, Phone: (518) 458-6483.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 12/19/90).
Contractor/Supervisor (full from 12/19/90).
Inspector (full from 12/19/90).
Inspector/Management Planner (full from 12/19/90).
Project Designer (full from 12/19/90).

(i)(a) *Training Provider:* AAC Contracting, Inc.

Address: 1225 Ridgeway Ave., Rochester, NY 14615, Contact: Mario DiNottia, Phone: (716) 458-8700.

(b) *Approved Course:*
Abatement Worker (Certified 8/7/89).

(ii)(a) *Training Provider:* ATC Environmental, Inc.
Address: 104 East 25th Street, New York, NY 10010, Contact: David Chambers, Phone: (212) 353-8280.

(b) *Approved Courses:*
Abatement Worker (Certified 3/15/89).
Inspector (Certified 2/20/90).

(iii)(a) *Training Provider:* Abatement Safety Training Institute.
Address: 323 West 39th Street, New York, NY 10018, Contact: Martin Mateo, Phone: (212) 629-8400.

(b) *Approved Courses:*
Abatement Worker (Certified 7/12/88).
Inspector (Certified 1/12/90).

(iv)(a) *Training Provider:* Adelaide Environmental Health Associates.
Address: 61 Front Street, Binghamton, NY 13905-4705, Contact: William Carter, Phone: (607) 722-6839.

(b) *Approved Course:*
Abatement Worker (Certified 6/20/88).

(v)(a) *Training Provider:* Advanced Analytical Laboratories, Inc.
Address: 30th and North Church Streets, Hazelton, PA 18201, Contact: Steve Hahn, Phone: (717) 455-5115.

(b) *Approved Course:*
Abatement Worker (Certified 3/16/88).

(vi)(a) *Training Provider:* Aerosol Monitoring and Analysis.
Address: 1341 Ashton Rd., Suite A, Hanover, MD 21076, Contact: Steven Blizzard, Phone: (301) 684-3327.

(b) *Approved Course:*
Abatement Worker (Certified 12/6/88).

(vii)(a) *Training Provider:* Alice Hamilton Occupational Health Center.
Address: 410 Seventh Street SE., Washington, DC 20003-2756, Contact: Brian Christopher, Phone: (202) 543-0005.

(b) *Approved Course:*
Abatement Worker (Certified 5/3/89).

(viii)(a) *Training Provider:* Alleghany Council for Occupational Health.
Address: 100 East Second St., Suite 3, Jamestown, NY 14701, Contact: Linda Berlin, Phone: (716) 488-0720.

(b) *Approved Course:*
Abatement Worker (Certified 7/17/89).

(ix)(a) *Training Provider:* Allwash of Syracyse, Inc.
Address: P.O. Box 605, Syracuse, NY 13201, Contact: Paul Watson, Phone: (315) 454-4476.

(b) *Approved Course:*
Abatement Worker (Certified 9/1/87).

(x)(a) *Training Provider:* Alternative Ways, Inc.
Address: 100 Essex Avenue, Bellmawr, NJ 08031, Contact: Donna Weiss, Phone: (609) 933-3300.

(b) *Approved Course:*
Abatement Worker (Certified 2/25/88).

(xi)(a) *Training Provider:* American Environmental Institute.
Address: 20220 Center Ridge Road, Cleveland, OH 44116, Contact: Gary Block, Phone: (216) 333-6225.

(b) *Approved Course:*
Abatement Worker (Certified 8/25/88).

(xii)(a) *Training Provider:* Anderson International.
Address: Rd No.2 North Main Street Extension, Jamestown, NY 14701, Contact: Sally Gould, Phone: (716) 664-4028.

(b) *Approved Courses:*
Abatement Worker (Certified 4/5/89).
Inspector (Certified 5/24/90).

(xiii)(a) *Training Provider:* Applied Respiratory Technology.
Address: P.O. Box 399, Hughsonville, NY 12537-0399, Contact: Charles Mayo, Phone: (914) 265-4330.

(b) *Approved Course:*
Abatement Worker (Certified 2/9/89).

(xiv)(a) *Training Provider:* Asbestos Control Management, Inc.
Address: 126 South Third Street, Olean, NY 14760, Contact: Clar D. Anderson, Phone: (716) 372-6393.

(b) *Approved Course:*
Abatement Worker (Certified 6/16/89).

(xv)(a) *Training Provider:* Asbestos Technical Services.
Address: Dogwood Road, Peekskill, NY 10566, Contact: Kenneth Strusz, Phone: (914) 739-7146.

(b) *Approved Course:*
Abatement Worker (Certified 1/1/88).

(xvi)(a) *Training Provider:* Asbestos Training Institute.
Address: 47 West 13th Street, 2nd Floor, New York, NY 10011, Contact: Jean Bodman, Phone: (212) 206-7019.

(b) *Approved Courses:*
Abatement Worker (Certified 2/1/87).
Inspector (Certified 9/19/90).

(xvii)(a) *Training Provider:* Asteco, Inc.
Address: 4287 Witmer Road, Niagara Falls, NY 14105, Contact: David Root, Phone: (716) 297-5981.

(b) *Approved Course:*
Abatement Worker (Certified 2/25/88).

(xviii)(a) *Training Provider:* Astoria Industries.
Address: 538 Stewart Avenue, Brooklyn, NY 11222, Contact: J. Gajeski, Phone: (718) 387-0011.

(b) *Approved Course:*
Abatement Worker (Certified 5/1/87).

(xix)(a) *Training Provider:* BOCES 2 - Suffolk County.
Address: 375 Locust Ave., Oakdale, NY 11789, Contact: Louise Baxter, Phone: (516) 563-2954.

(b) *Approved Course:*
Abatement Worker (Certified 3/29/89).

(xx)(a) *Training Provider:* BOCES III - Suffolk County.
Address: 17 Westminster Ave, Dix Hills, NY 11746, Contact: George Flemming, Phone: (516) 667-6000.

(b) *Approved Course:*
Abatement Worker (Certified 1/4/88).

(xxi)(a) *Training Provider:* Biospherics, Inc.
Address: 12051 Indian Creek Court, Beltsville, MD 20705, Contact: Joyce Eger, Phone: (301) 369-3900.

(b) *Approved Course:*
Abatement Worker (Certified 9/1/87).

(xxii)(a) *Training Provider:* Buffalo Laborers Training Fund No. 210.
Address: 1370 Seneca St., Buffalo, NY 14210, Contact: Victor Sansanese, Phone: (716) 825-0883.

(b) *Approved Course:*
Abatement Worker (Certified 3/7/88).

(xxiii)(a) *Training Provider:* Building Laborers of NJ - Training and Education Trust Fund.
Address: 31 Mott Ave., P.O. Box 553, Jamesburg, NJ 08831, Contact: Emanuel Riggi, Phone: (201) 521-0200.

(b) *Approved Course:*
Abatement Worker (Certified 1/1/86).

(xxiv)(a) *Training Provider:* CA Rich Consultants, Inc.
Address: 404 Glen Cove Ave., Sea Cliff, NY 15799, Contact: Bruce Beck, Phone: (516) 674-3889.

(b) *Approved Course:*
Abatement Worker (Certified 6/5/90).

(xxv)(a) *Training Provider:* Calibrations, Inc.
Address: 802 Watervliet-Shaker Rd., Latham, NY 12110, Contact: James Percent, Phone: (518) 786-1865.

(b) *Approved Courses:*
Abatement Worker (Certified 3/7/88).
Inspector (Certified 8/13/90).

(xxvi)(a) *Training Provider:* Camtech, Inc.
Address: 4550 McKnight Rd., Suite 202, Pittsburgh, PA 15237, Contact: Leslie Connors, Phone: (412) 931-1210.

(b) *Approved Course:*
Abatement Worker (Certified 5/18/90).

(xxvii)(a) *Training Provider:* Cayuga - Onondaga BOCES.

Address: 234 South Street Rd., Auburn, NY 13021, Contact: Peter Pirnie, Phone: (315) 253-0361.

(b) *Approved Course:*

Abatement Worker (Certified 3/21/88).

(xxviii)(a) *Training Provider:* Center for Environmental & Occupational Training, Inc.

Address: 814 East Pittsburgh Plaza, East Pittsburgh, PA 15112, Contact: Joseph Hughes, Phone: (412) 823-1002.

(b) *Approved Course:*

Abatement Worker (Certified 1/11/90).

(xxix)(a) *Training Provider:* Certified Engineering & Testing Co., Inc.

Address: 25 Mathewson Dr., Weymouth, MA 02189, Contact: Robert Thornburgh, Phone: (617) 337-7887.

(b) *Approved Course:*

Abatement Worker (Certified 8/28/88).

(xxx)(a) *Training Provider:* Comprehensive Analytical Group, Inc.

Address: 147 Midler Park Dr., Syracuse, NY 13206, Contact: David Serino, Phone: (315) 432-0855.

(b) *Approved Course:*

Abatement Worker (Certified 10/28/88).

(xxxi)(a) *Training Provider:* Con-Test.

Address: 39 Spruce St., P.O. Box 591, East Longmeadow, MA 01028, Contact: Brenda Bolduc, Phone: (413) 525-1198.

(b) *Approved Course:*

Abatement Worker (Certified 9/1/86).

(xxxii)(a) *Training Provider:* Corning, Inc.

Address: Corporate Safety & Health, HP C-2-10, Corning, NY 14831, Contact: Ron Kitson, Phone: (607) 974-8638.

(b) *Approved Course:*

Abatement Worker (Certified 1/19/88).

(xxxiii)(a) *Training Provider:* D/E3, Inc.

Address: 19701 South Miles Parkway, N-12, Warrensville, OH 44128, Contact: Harold Danto, Phone: (216) 663-1200.

(b) *Approved Course:*

Abatement Worker (Certified 7/6/89).

(xxxiv)(a) *Training Provider:* Dennison Environmental, Inc.

Address: 74 Commerce Way, Woburn, MA 01801, Contact: Joan Ryan, Phone: (617) 932-9400.

(b) *Approved Course:*

Abatement Worker (Certified 3/28/88).

(xxxv)(a) *Training Provider:* Dore & Associates Contracting, Inc.

Address: 900 Harry S. Truman Pkwy., Bay City, MI 48707, Contact: Joseph Goldsing, Phone: (517) 684-8358.

(b) *Approved Course:*

Abatement Worker (Certified 6/28/88).

(xxxvi)(a) *Training Provider:* E.I. DuPont DeNemours & Co., Inc.

Address: Chambers Workers, Petroleum Labs, Deepwater, NJ 08023, Contact: Jeff Thomason, Phone: (609) 540-2918.

(b) *Approved Course:*

Abatement Worker (Certified 6/1/86).

(xxxvii)(a) *Training Provider:* Edward O. Watts & Associates.

Address: 1331 N. Forrest Rd., Suite 340, Buffalo, NY 14221, Contact: Edward Watts, Phone: (716) 688-4827.

(b) *Approved Courses:*

Abatement Worker (Certified 12/1/88).
Inspector (Certified 9/24/90).

(xxxviii)(a) *Training Provider:* Enclosure Technology, Inc.

Address: 861 Manhattan Ave., Suite 14, Brooklyn, NY 11222, Contact: Roland Baronowski, Phone: (718) 349-3235.

(b) *Approved Course:*

Abatement Worker (Certified 9/5/90).

(xxxix)(a) *Training Provider:* Enviro Med Services, Inc.

Address: 25 Science Park, New Haven, CT 06511, Contact: George Giacco, Phone: (203) 786-5580.

(b) *Approved Course:*

Abatement Worker (Certified 10/12/89).

(xl)(a) *Training Provider:* Environmental Safety Institute.

Address: 4225 Millersport Highway, Amherst, NY 14228, Contact: Betty Glovins, Phone: (716) 689-4806.

(b) *Approved Course:*

Abatement Worker (Certified 3/1/88).

(xli)(a) *Training Provider:* Environmental Training Corporation.

Address: 100 Moody St., Ludlow, MA 01056, Contact: Anne Folta, Phone: (413) 589-1882.

(b) *Approved Course:*

Abatement Worker (Certified 6/20/89).

(xlii)(a) *Training Provider:* Environmental Training Inc.

Address: Tinicum Industrial Park, Bldg. N, 10 Industrial Highway, Philadelphia, PA 19113, Contact: Gary Hyrne, Phone: (215) 521-5469.

(b) *Approved Course:*

Abatement Worker (Certified 12/8/89).

(xliii)(a) *Training Provider:* Environmental Training Services.

Address: 62 H Montvale Ave., Stoneham, MA 02180, Contact: Kenneth Martin, Phone: (617) 279-0855.

(b) *Approved Course:*

Abatement Worker (Certified 1/1/87).

(xliv)(a) *Training Provider:* Failsafe Risk Management Alternatives, Inc.

Address: 1670 Western Ave., Albany, NY 12203, Contact: James McKeon, Phone: (518) 452-4360.

(b) *Approved Courses:*

Abatement Worker (Certified 4/25/90).
Inspector (Certified 10/3/90).

(xlv)(a) *Training Provider:* Fostock Corporation.

Address: 392 Fifth Ave., Paterson, NJ 07514, Contact: Anna Ghassibi, Phone: (201) 345-0040.

(b) *Approved Course:*

Abatement Worker (Certified 6/19/90).

(xlvi)(a) *Training Provider:* Future Environmental Designs, Inc.

Address: 114 Old Country Rd., Suite 620, Mineola, NY 11501, Contact: Michael Marcik, Phone: (516) 742-2557.

(b) *Approved Courses:*

Abatement Worker (Certified 8/21/90).
Inspector (Certified 8/21/90).

(xlvii)(a) *Training Provider:* G.S.T. Company.

Address: 50 Progress Ave., Zelienople, PA 16063, Contact: Norma Stanford, Phone: (412) 772-7488.

(b) *Approved Course:*

Abatement Worker (Certified 10/4/88).

(xlviii)(a) *Training Provider:* General Building Laborers Local No. 66.

Address: 286 Middle Island Rd., Medford, NY 11763, Contact: Peter Purazzella, Phone: (516) 696-2280.

(b) *Approved Course:*

Abatement Worker (Certified 10/4/88).

(xlix)(a) *Training Provider:* General Physics Corporation.

Address: 6700 Alexander Bell Dr., Columbia, MD 21046-2100, Contact: Andrew Marsh, Phone: (301) 290-2300.

(b) *Approved Course:*

Abatement Worker (Certified 6/15/88).

(l)(a) *Training Provider:* Geo-Environmental Company, Inc.

Address: P.O. Box 274, Yonkers, NY 10710, Contact: Carol Califano, Phone: (914) 375-1554.

(b) *Approved Course:*

Abatement Worker (Certified 4/12/90).

(li)(a) *Training Provider:* Georgia Institute of Technology.

Address: O'Keefe Bldg., ESTD Room 027, Atlanta, GA 30332, Contact: Margaret Ojala, Phone: (404) 894-3806.

(b) *Approved Course:*

Abatement Worker (Certified 5/11/87).

(lii)(a) *Training Provider:* Health/Safety/Risk Management - Albany Schoharie Schenectady BOCES.

Address: 47 Cornell Rd., Latham, NY 12110, Contact: Charlene Vespi, Phone: (518) 786-3211.

(b) *Approved Courses:*

Abatement Worker (Certified 8/30/89).
Inspector (Certified 1/31/90).

(liii)(a) *Training Provider:* Hillman Technical Services.

Address: 1089 Cedar Ave., Suite 2, Union, NJ 07083, Contact: Steven Gladstone, Phone: (201) 686-3461.

(b) *Approved Course:*

Abatement Worker (Certified 3/3/90).

(liv)(a) *Training Provider:* Hudson Asbestos Training Institute.

Address: 604 Manhattan Ave., Brooklyn, NY 11222, Contact: Ann Sumiec, Phone: (718) 383-2656.

(b) *Approved Course:*

Abatement Worker (Certified 4/30/90).

(lv)(a) *Training Provider:* Hunter College Asbestos Training Center.

Address: 425 East 25th St., New York, NY 10010, Contact: Jacquenette Locker, Phone: (212) 481-7569.

(b) *Approved Course:*

Abatement Worker (Certified 1/1/87).

(lvi)(a) *Training Provider:* Hygeia Research & Training.

Address: P.O. Box 4506, Utica, NY 13501, Contact: Richard Gigliotti, Phone: (315) 732-8567.

(b) *Approved Course:*

Abatement Worker (Certified 3/7/88).

(lvii)(a) *Training Provider:* Hygeia, Inc.

Address: 303 Bear Hill Rd., Waltham, MA 02154, Contact: David Kaplan, Phone: (617) 890-4999.

(b) *Approved Course:*

Inspector (Certified 5/18/90).

(lviii)(a) *Training Provider:* Hygienetics, Inc.

Address: 150 Causeway St., Boston, MA 02114, Contact: MaryBeth Carver, Phone: (617) 723-4664.

(b) *Approved Courses:*

Abatement Worker (Certified 6/6/88).
Inspector (Certified 9/27/90).

(lix)(a) *Training Provider:* Institute for Environmental Education.

Address: 500 West Cummings Park, Suite 3650, Woburn, MA 01801, Contact: Starla Engelhardt, Phone: (617) 935-7370.

(b) *Approved Courses:*

Abatement Worker (Certified 8/1/88).
Inspector (Certified 8/21/90).

(lx)(a) *Training Provider:* Institute of Asbestos Technology.

Address: 5900 Butternut Dr., East Syracuse, NY 13057, Contact: Charles Kirch, Phone: (315) 437-1307.

(b) *Approved Course:*

Abatement Worker (Certified 10/24/87).

(lxi)(a) *Training Provider:* International Technology Corporation.

Address: 17605 Fabrica Way, Cerritos, CA 90701, Contact: Sean Smith, Phone: (213) 921-9631.

(b) *Approved Course:*

Abatement Worker (Certified 12/30/87).

(lxii)(a) *Training Provider:* Jenkins Professional Inc.

Address: 5024 Campbell Blvd, Suite D, Baltimore, MD 21236, Contact: Larry Jenkins, Phone: (301) 931-7588.

(b) *Approved Course:*

Abatement Worker (Certified 6/1/88).

(lxiii)(a) *Training Provider:* Joint Apprenticeship & Training Committee.

Address: 425 Broad Hollow Rd., Suite 405, Melville, NY 11747, Contact: R. Erickson, Phone: (516) 694-2022.

(b) *Approved Course:*

Abatement Worker (Certified 11/30/87).

(lxiv)(a) *Training Provider:* Kaselaan and D'Angelo Associates, Inc.

Address: 220 Fifth Ave., 17th Floor, New York, NY 10001, Contact: Lance Fredricks, Phone: (212) 216-6340.

(b) *Approved Course:*

Abatement Worker (Certified 4/1/88).

(lxv)(a) *Training Provider:* Kemron Environmental Services, Inc.

Address: 755 New York Ave., Huntington, NY 11743, Contact: John Peters, Phone: (516) 427-0950.

(b) *Approved Course:*

Abatement Worker (Certified 10/4/88).

(lxvi)(a) *Training Provider:* Korean Asbestos Training Center.

Address: 136-15 Roosevelt Ave., 3rd Floor, Flushing, NY 11354, Contact: Tchang Bahrk, Phone: (718) 321-2700.

(b) *Approved Course:*

Abatement Worker (Certified 1/3/90).

(lxvii)(a) *Training Provider:* Laborer's Local No. 17 Education & Training Fund.

Address: 305 C Little Britain Rd., Newburgh, NY 12550, Contact: Victor Mandia, Phone: (914) 562-1121.

(b) *Approved Course:*

Abatement Worker (Certified 1/1/87).

(lxviii)(a) *Training Provider:* Laborer's Local No. 91 Training & Education Fund.

Address: 2556 Seneca Ave., Niagara Falls, NY 10010, Contact: Joel Cicero, Phone: (716) 297-6001.

(b) *Approved Course:*

Abatement Worker (Certified 7/27/90).

(lxix)(a) *Training Provider:* Laborer's Local No. 214 Training & Education Fund.

Address: 23 Mitchell St., Oswego, NY 13126, Contact: John Shannon, Phone: (315) 343-8553.

(b) *Approved Course:*

Abatement Worker (Certified 8/17/87).

(lxx)(a) *Training Provider:* Long Island Lighting Company.

Address: 131 Hoffman Lane, Central Islip, NY 11722, Contact: Ernest Papadoulias, Phone: (516) 436-4076.

(b) *Approved Course:*

Abatement Worker (Certified 2/20/89).

(lxxi)(a) *Training Provider:* Lozier Architects & Engineers.

Address: 1050 Pittsford-Victor Rd., Pittsford, NY 14534, Contact: Dyke Coyne, Phone: (716) 381-2210.

(b) *Approved Course:*

Abatement Worker (Certified 1/12/88).

(lxxii)(a) *Training Provider:* META.

Address: P.O. Box 786, Lawrence, KS 66044, Contact: Katy Nitcher, Phone: (913) 842-6382.

(b) *Approved Course:*

Abatement Worker (Certified 4/3/90).

(lxxiii)(a) *Training Provider:* Mid-Atlantic Asbestos Training Center.

Address: Brookwood II, 45 Knightsbridge Rd., Piscataway, NY 08854, Contact: Lee Lausten, Phone: (201) 463-5062.

(b) *Approved Courses:*

Abatement Worker (Certified 7/1/86).
Inspector (Certified 3/30/90).

(lxxiv)(a) *Training Provider:* Monroe Community College.

Address: 1000 East Henrietta Rd., Bailey Center, Rochester, NY 14623-5780, Contact: David Duford, Phone: (716) 292-2000.

(b) *Approved Course:*

Abatement Worker (Certified 6/1/88).

(lxxv)(a) *Training Provider:* Mystic Air Quality Consultants, Inc.

Address: 1204 North Rd., Groton, CT 06340, Contact: Christopher Eident, Phone: (203) 449-8903.

(b) *Approved Course:*

Abatement Worker (Certified 5/2/88).

(lxxvi)(a) *Training Provider:* National Asbestos Training Institute.

Address: 1766 Bloomsbury Ave., Ocean, NJ 07712, Contact: Doris Adler, Phone: (201) 918-0610.

(b) *Approved Courses:*

Abatement Worker (Certified 5/27/85).
Inspector (Certified 8/6/90).

(lxxvii)(a) *Training Provider:* National Training Fund for Sheet Metal & Air Conditioning Industry.

Address: 1126 16th Street NW., Washington, DC 20036, Contact: Matthew Gillen, Phone: (202) 887-1980.

(b) *Approved Course:*

Abatement Worker (Certified 11/1/86).

(lxxviii)(a) *Training Provider:* New England Laborer's Training Fund.

Address: 37 East St., Hopkinton, MA 01748-2699, Contact: James Merloni, Phone: (508) 435-6316.

(b) *Approved Course:*

Abatement Worker (Certified 4/7/86).

(lxxix)(a) *Training Provider:* New York Committee for Occupational Safety and Health.

Address: 275 Seventh Ave., 25th Floor, New York, NY 10001, Contact: Joel Shufro, Phone: (212) 627-3900.

(b) *Approved Course:*

Abatement Worker (Certified 1/27/88).

(lxxx)(a) *Training Provider:* New York District Council of Carpenters Labor Technical College.

Address: 395 Hudson St., Clarkson St. Entrance, New York, NY 10014, Contact: Charles Fanning, Phone: (212) 727-2224.

(b) *Approved Course:*

Abatement Worker (Certified 5/19/89).

(lxxxi)(a) *Training Provider:* New York State Carpenters Labor Management Committee.

Address: P.O. Box 266, Milford, NY 13807, Contact: Maurice Torruella, Phone: (607) 286-7755.

(b) *Approved Course:*

Abatement Worker (Certified 3/23/89).

(lxxxii)(a) *Training Provider:* New York University School of Continuing Education.

Address: 10 East 38th St., New York, NY 10016, Contact: Charles Schwartz, Phone: (212) 545-0077.

(b) *Approved Courses:*

Abatement Worker (Certified 8/7/89).
Inspector (Certified 10/16/90).

(lxxxiii)(a) *Training Provider:* Niagara County Community College.

Address: 160 Washburn St., P.O. Box 70, Lockport, NY 14095, Contact: Mary Baldi-Fron, Phone: (716) 433-1856.

(b) *Approved Courses:*

Abatement Worker (Certified 1/4/87).
Inspector (Certified 8/22/90).

(lxxxiv)(a) *Training Provider:* Niagara Mohawk Power Corporation.

Address: Training Dept., 300 Erie Blvd., West Syracuse, NY 13202, Contact: Eileen Reynolds, Phone: (315) 428-5534.

(b) *Approved Course:*

Abatement Worker (Certified 4/10/90).

(lxxxv)(a) *Training Provider:* O'Brien & Gere Engineers, Inc.

Address: 5000 Brittonfield Parkway, P.O. Box 4873, Syracuse, NY 13221, Contact: Michael Quirk, Phone: (315) 437-6100.

(b) *Approved Courses:*

Abatement Worker (Certified 2/23/89).
Inspector (Certified 7/23/90).

(lxxxvi)(a) *Training Provider:* Orange-Ulster BOCES.

Address: Gibson Rd., Rd. No. 2, Goshen, NY 10924, Contact: Arthur Lange, Phone: (914) 294-5431.

(b) *Approved Course:*

Abatement Worker (Certified 2/3/89).

(lxxxvii)(a) *Training Provider:* PSI Hall-Kimbrell Environmental Services, Inc.-Flushing.

Address: 129-02 26 St., Flushing, NY 11354, Contact: William Audley, Phone: (718) 445-9090.

(b) *Approved Courses:*

Abatement Worker (Certified 8/1/87).
Inspector (Certified 12/4/90).

(lxxxviii)(a) *Training Provider:* PSI Hall-Kimbrell Environmental Services, Inc.-Kansas.

Address: 4840 West 15th St., Lawrence, KS 66044, Contact: Alice Hart, Phone: (315) 463-5542.

(b) *Approved Course:*

Abatement Worker (Certified 8/1/87).

(lxxxix)(a) *Training Provider:* PSI-Hall Kimbrell Environmental Services, Inc.-Syracuse.

Address: 6103 East Molloy Rd., East Syracuse, NY 13057, Contact: Julie Williams, Phone: (315) 463-5542.

(b) *Approved Courses:*

Abatement Worker (Certified 8/1/87).
Inspector (Certified 12/4/90).

(xc)(a) *Training Provider:* Paradigm Environmental Services, Inc.

Address: 961 Lyell Ave., Building 2, Suite 8, Rochester, NY 14606, Contact: Dmitry Tsimberrov, Phone: (716) 647-2530.

(b) *Approved Course:*

Abatement Worker (Certified 8/29/89).

(xci)(a) *Training Provider:* Professional Testing Laboratories, Inc.

Address: 18 Seaview Blvd., Port Washington, NY 11050, Contact: Yelena Goodman, Phone: (516) 484-7878.

(b) *Approved Course:*

Abatement Worker (Certified 5/10/90).

(xcii)(a) *Training Provider:* Quality Control Services.

Address: 10 Lowell Rd., Andover, MA 01810, Contact: Ajay Pathak, Phone: (518) 475-0623.

(b) *Approved Course:*

Abatement Worker (Certified 6/1/88).

(xciii)(a) *Training Provider:* Rennselaer, Columbia, Green BOCES.

Address: Brookview Rd., P.O. Box 26, Brookview, NY 12026, Contact: Shirley Readdean, Phone: (518) 732-4474.

(b) *Approved Course:*

Abatement Worker (Certified 4/10/89).

(xciv)(a) *Training Provider:* Retra Services, Inc.

Address: 211 Oxford Blvd., Allison Park, PA 15101, Contact: Phillip Parroff, Phone: (412) 487-1711.

(b) *Approved Course:*

Abatement Worker (Certified 5/10/90).

(xcv)(a) *Training Provider:* Rochester Gas and Electric.

Address: 89 East Ave., Rochester, NY 14649-0001, Contact: Jeffrey Williams, Phone: (716) 724-8129.

(b) *Approved Course:*

Abatement Worker (Certified 4/4/88).

(xcvi)(a) *Training Provider:* Safety Training, Inc.

Address: 114 Durst Pl., Yonkers, NY 10704, Contact: Nelson Helu, Phone: (914) 963-6831.

(b) *Approved Course:*

Abatement Worker (Certified 1/31/90).

(xcvii)(a) *Training Provider:* Seagull/ Asbestos Consulting & Training Systems.

Address: 903 Northwest 6th Ave., Fort Lauderdale, FL 33311, Contact: James Stump, Phone: (305) 524-7209.

(b) *Approved Course:*

Abatement Worker (Certified 2/29/88).

(xcviii)(a) *Training Provider:* Sevenson Environmental Services.

Address: 2749 Lockport Rd., Niagara Falls, NY 14302, Contact: Paul Hitcho, Phone: (716) 284-0431.

(b) *Approved Course:*

Abatement Worker (Certified 2/1/88).

(xcix)(a) *Training Provider:* State University of New York at Buffalo.

Address: 111 Faber Hall, Buffalo, NY 14214, Contact: Joseph Syracuse, Phone: (716) 831-2125.

(b) *Approved Courses:*

Abatement Worker (Certified 2/2/90).
Inspector (Certified 7/9/90).

(c)(a) *Training Provider:* Suffolk County Carpenters Apprenticeship and Journeymans Retraining Fund.

Address: 3390 Route No. 112, Medford, NY 11763, Contact: Carl Berglin, Phone: (516) 732-2501.

(b) *Approved Course:*

Abatement Worker (Certified 2/14/89).

(ci)(a) *Training Provider:* Temple University College of Engineering.

Address: 12th and Norris St., Philadelphia, PA 19122, Contact: M. A. Bernarde, Phone: (212) 787-6479.

(b) *Approved Course:*

Abatement Worker (Certified 6/1/87).

(cii)(a) *Training Provider:* Testwell Craig Laboratories - Albany.

Address: 518 Clinton Ave., Albany, NY 12206, Contact: George Stowell, Phone: (518) 436-4114.

(b) *Approved Courses:*

Abatement Worker (Certified 3/6/88).
Inspector (Certified 4/11/90).

(ciii)(a) *Training Provider:* Testwell Craig Laboratories - Ossining.

Address: 518 Clinton Ave., Albany, NY 12206, Contact: George Stowell, Phone: (518) 436-4114.

(b) *Approved Course:*

Abatement Worker (Certified 9/7/90).

(civ)(a) *Training Provider:* The Environmental Institute.

Address: 350 Franklin Rd., Suite 300, Marietta, GA 30067, Contact: Rachel McCain, Phone: (404) 425-2000.

(b) *Approved Courses:*

Abatement Worker (Certified 2/1/88).
Inspector (Certified 3/28/90).

(cv)(a) *Training Provider:* Tri-Cities Laborers.

Address: 666 Wemple Rd., Box 100, Glenmont, NY 12077, Contact: Joseph Zappone, Phone: (518) 426-0290.

(b) *Approved Course:*

Abatement Worker (Certified 12/1/87).

(cvi)(a) *Training Provider:* Tufts University Division of Education.

Address: 177 College Ave., Medford, NY 02155, Contact: Anne Chabot, Phone: (617) 381-3531.

(b) *Approved Course:*

Abatement Worker (Certified 1/1/86).

(cvii)(a) *Training Provider:* Union Occupational Health Center.

Address: 450 Grider St., Buffalo, NY 14215, Contact: Jeanne Reilly, Phone: (716) 894-9366.

(b) *Approved Course:*

Abatement Worker (Certified 10/28/88).

(cviii)(a) *Training Provider:* United Environmental Systems.

Address: 35 W. 35th St., New York, NY 10001, Contact: Eyal Bakshi, Phone: (212) 643-9633.

(b) *Approved Course:*

Abatement Worker (Certified 5/18/88).

(cix)(a) *Training Provider:* University of Cincinnati Medical Center, Institute of Environmental Health.

Address: 3223 Eden Ave., ML56, Cincinnati, OH 45267-0056, Contact: Judy Jarrell, Phone: (513) 558-1729.

(b) *Approved Course:*

Abatement Worker (Certified 11/15/88).

(cx)(a) *Training Provider:* University of Illinois - Chicago.

Address: 1440 W. Washington Blvd., Chicago, IL 60607, Contact: Richard Lyons, Phone: (312) 829-1277.

(b) *Approved Course:*

Abatement Worker (Certified 6/1/86).

(cxi)(a) *Training Provider:* University of Kansas/National.

Address: 6600 College Blvd., Suite 315, Overland, KS 66211, Contact: Lani Himegarner, Phone: (913) 491-0181.

(b) *Approved Course:*

Abatement Worker (Certified 9/1/87).

(cxii)(a) *Training Provider:* Utilicon, Inc.

Address: 7 Tobey Villiage Office Park, Pittsford, NY 14534, Contact: Dennis Money, Phone: (716) 381-8710.

(b) *Approved Course:*

Abatement Worker (Certified 7/25/89).

(cxiii)(a) *Training Provider:* Warren Mae Associates.

Address: 1480 Park St., White Bear Lake, MN 55110, Contact: Janine Rogelstad, Phone: (607) 754-8386.

(b) *Approved Course:*

Abatement Worker (Certified 7/19/88).

(cxiv)(a) *Training Provider:* White Lung Association.

Address: 901 Broad St., 2nd Floor, Newark, NJ 07102, Contact: Myles O'Malley, Phone: (201) 824-2623.

(b) *Approved Course:*

Abatement Worker (Certified 12/1/86).

(cxv)(a) *Training Provider:* Wild Apple Enterprises LTD.

Address: North Hollow Rd., Granville, VT 05747, Contact: John Furman, Phone: (812) 767-4415.

(b) *Approved Course:*

Abatement Worker (Certified 4/24/90).

North Dakota

(18)(a) *State Agency:* State Dept. of Health & Consolidated Laboratories, Address: 1200 Missouri Ave., Box 5520, Bismark, ND 58505, Contact: Ken Wangler, Phone: (701) 224-2348.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 4/21/89).
Contractor/Supervisor (full from 4/21/89).
Inspector (full from 4/21/89).
Inspector/Management Planner (full from 4/21/89).
Project Designer (full from 4/21/89).

(i)(a) *Training Provider:* Midwest Asbestos Consultants, Inc.

Address: Box 1708, Fargo, ND 58107, Contact: Jerry Day, Phone: (701) 280-2286.

(b) *Approved Courses:*

Abatement Worker (Certified 6/30/89).
Abatement Worker Annual Review (Certified 7/31/89).

(ii)(a) *Training Provider:* Survey Management and Design.

Address: 2605 35th Ave. SW., Fargo, ND 58104, Contact: Peter L. Mehl, Phone: (701) 234-9556.

(b) *Approved Courses:*

Abatement Worker (Certified 6/13/89).
Abatement Worker Annual Review (Certified 1/5/90).
Contractor/Supervisor (Certified 6/13/89).
Contractor/Supervisor Annual Review (Certified 8/10/89).
Inspector/Management Planner (Certified 8/24/89).
Inspector/Management Planner Annual Review (Certified 3/28/90).

(iii)(a) *Training Provider:* University of North Dakota.

Address: Box 8275 University Station, Grand Forks, ND 58201, Contact: Dale Patrick, Phone: (701) 777-3341.

(b) *Approved Courses:*

Abatement Worker (Certified 6/13/89).
Abatement Worker Annual Review (Certified 3/28/90).
Contractor/Supervisor (Certified 6/13/89).
Contractor/Supervisor Annual Review (Certified 3/28/90).
Inspector/Management Planner (Certified 10/2/90).

Oregon

(19)(a) *State Agency:* State of Oregon Dept. of Environmental Quality, Address: 811 Southwest Sixth Ave., Portland, OR 97204-1390, Contact: Bruce E. Arnold, Phone: (503) 229-5506.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 9/23/88).
Contractor/Supervisor (full from 9/23/88).

(i)(a) *Training Provider:* Alice Hamilton Occupational Health Center.

Address: 410 7th Street, SE., Washington, DC 20003, Contact: Brian Christopher, Phone: (202) 543-0005.

(b) *Approved Course:*

Abatement Worker (Certified 12/6/90).

(ii)(a) *Training Provider:* Asbestos Training Project Workplace Resources.

Address: 1906 Southeast Pershing St., Portland, OR 97203, Contact: Wendy Wiles, Phone: (503) 233-7707.

(b) *Approved Courses:*

Abatement Worker (Certified 9/23/88).
Contractor/Supervisor (Certified 9/23/89).

(iii)(a) *Training Provider:* Hazcon, Inc.

Address: 9500 Southwest Barbur, Portland, OR 97219, Contact: Randi Olson, Phone: (503) 244-8045.

(b) *Approved Courses:*

Abatement Worker (Certified 9/23/88).
Contractor/Supervisor (Certified 9/23/88).

(iv)(a) *Training Provider:* Laborers/AGC Apprenticeship & Training Program.

Address: Route 5, Box 325A, Corvallis, OR 97330, Contact: Bill Duke, Phone: (503) 745-5513.

(b) *Approved Courses:*

Abatement Worker (Certified 9/23/88).
Contractor/Supervisor (Certified 9/23/88).

(v)(a) *Training Provider:* Marine & Environmental Testing, Inc.

Address: P.O. Box 1142, Beaverton, OR 97075, Contact: Martin Finkel, Phone: (503) 286-2950.

(b) *Approved Course:*

Abatement Worker (Certified 12/3/88 to 9/18/89 **only**).

(vi)(a) *Training Provider:* NAC Corporation.

Address: 1005 Northwest Galveston, Suite E, Bend, OR 97701, Contact: Dale Schmidt, Phone: (503) 389-9727.

(b) *Approved Courses:*

Abatement Worker (Certified 3/23/89).
Contractor/Supervisor (Certified 4/1/90).

(vii)(a) *Training Provider:* Northwest Envirocon, Inc.

Address: P.O. Box 4638, Vancouver, WA 98682, Contact: Debbie Dunn, Phone: (206) 699-4015.

(b) *Approved Courses:*

Abatement Worker (Certified 12/14/88).
Contractor/Supervisor (Certified 12/14/88).

(viii)(a) *Training Provider:* PSI/Hall-Kimbrell Environmental Division.

Address: 4621 SW Kelly Avenue, Portland, OR 97201, Contact: Kelly Champion, Phone: (503) 223-1440.

(b) *Approved Courses:*

Abatement Worker (Certified 12/28/88).
Contractor/Supervisor (Certified 9/7/89).

Rhode Island

(20)(a) *State Agency:* State of Rhode Island & Providence Plantations, Department of Health, Address: 206 Cannon Bldg., Three Capitol Hill, Providence, RI 02908, Contact: William Dundulis, Jr., Phone: (401) 277-3601.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 2/4/86).
Contractor/Supervisor (full from 2/4/86).
Inspector/Management Planner (full from 8/3/89).
Project Designer (full from 8/3/89).

(i)(a) *Training Provider:* A & S Training School, Inc.

Address: 99 South Cameron St., Harrisburg, PA 17101, Contact: William I. Roberts, Phone: (717) 257-1360.

(b) *Approved Course:*

Contractor/Supervisor (Certified 3/31/89).

(ii)(a) *Training Provider:* Analytical Testing Services, Inc.

Address: 180 Weeden St., Pawtucket, RI 02860, Contact: Robert Weisberg, Phone: (401) 723-7978.

(b) *Approved Courses:*

Abatement Worker Annual Review (Certified 12/10/86).
Contractor/Supervisor Annual Review (Certified 12/10/86).

(iii)(a) *Training Provider:* Applied Occupational Health Systems.

Address: 29 River Rd., Suite 18, Concord, NH 03301, Contact: H. Charles Claridge, II, Phone: (603) 228-3610.

(b) *Approved Courses:*

Abatement Worker (Certified 6/11/90).
Contractor/Supervisor (Certified 6/11/90).

(iv)(a) *Training Provider:* Asbestos Consulting & Training Systems.

Address: 903 Northwest Sixth Ave., Fort Lauderdale, FL 33311, Contact: James F. Stump, Phone: (305) 524-7208.

(b) *Approved Course:*

Abatement Worker (Certified 11/21/89).

(v)(a) *Training Provider:* Center for Environmental Management-Tufts University.

Address: 474 Boston Ave., Medford, MA 02155, Contact: Brenda Cole, Phone: (617) 381-3531.

(b) *Approved Courses:*

Abatement Worker (Certified 7/1/86).
Abatement Worker Annual Review (Certified 3/31/89).
Contractor/Supervisor (Certified 7/1/86).
Contractor/Supervisor Annual Review (Certified 3/31/89).

(vi)(a) *Training Provider:* Certified Engineering & Testing Co., Inc.

Address: 100 Grossman Dr., Braintree, MA 02184, Contact: Robert Thornburgh, Phone: (617) 849-0111.

(b) *Approved Courses:*

Abatement Worker (Certified 8/22/89).
Abatement Worker Annual Review (Certified 8/22/89).
Contractor/Supervisor (Certified 8/22/89).
Contractor/Supervisor Annual Review (Certified 8/22/89).

(vii)(a) *Training Provider:* Chemscope, Inc.

Address: P.O. Box 389, Newhaven, CT 06513, Contact: Ronald D. Arena, Phone: (203) 865-5605.

(b) *Approved Courses:*

Abatement Worker Annual Review (Certified 11/27/90).
Contractor/Supervisor Annual Review (Certified 11/27/90).

(viii)(a) *Training Provider:* Community College of Rhode Island.

Address: 1762 Louisquisset Pk., Lincoln, RI 02865, Contact: Richard Tessier, Phone: (401) 333-7166.

(b) *Approved Courses:*

Abatement Worker (Certified 11/13/87).
Abatement Worker Annual Review (Certified 3/31/89).
Contractor/Supervisor (Certified 3/31/89).
Contractor/Supervisor Annual Review (Certified 3/31/89).
Inspector/Management Planner Annual Review (Certified 12/14/90).

(ix)(a) *Training Provider:* Con-Test Educational Center.

Address: 39 Spruce St., East Longmeadow, MA 01028, Contact: Brenda Bolduc, Phone: (413) 525-1198.

(b) *Approved Courses:*

Abatement Worker (Certified 3/1/86).
Abatement Worker Annual Review (Certified 2/8/89).
Contractor/Supervisor (Certified 3/1/86).
Contractor/Supervisor Annual Review (Certified 2/8/89).

(x)(a) *Training Provider:* Dennison Environmental, Inc.

Address: 74 Commerce Way, Woburn, MA 01801, Contact: Joan Lion, Phone: (617) 932-9400.

(b) *Approved Courses:*

Abatement Worker (Certified 4/30/89).
Abatement Worker Annual Review (Certified 4/30/89).
Contractor/Supervisor (Certified 4/30/89).
Contractor/Supervisor Annual Review (Certified 4/30/89).

(xi)(a) *Training Provider:* Environmed Services, Inc.

Address: 25 Science Park, New Haven, CT 06511, Contact: George Giacco, Jr., Phone: (203) 786-5580.

(b) *Approved Courses:*

Abatement Worker (Certified 9/28/89).

Abatement Worker Annual Review (Certified 12/6/90).
Contractor/Supervisor (Certified 9/28/89).
Contractor/Supervisor Annual Review (Certified 12/6/90).

(xii)(a) *Training Provider:*
Environmental Training Corp.
Address: 100 Moody St., Suite 200, Ludlow, MA 01056, Contact: Anne Folta, Phone: (413) 289-1409.

(b) *Approved Courses:*
Abatement Worker (Certified 1/31/89).
Abatement Worker Annual Review (Certification Pending).
Contractor/Supervisor (Certified 1/31/89).
Contractor/Supervisor Annual Review (Certification Pending).

(xiii)(a) *Training Provider:*
Environmental Training Services.
Address: 62 - H Montvale Pl., Stoneham, MA 02180, Contact: Maryann Martin, Phone: (617) 279-0855.

(b) *Approved Courses:*
Abatement Worker (Certified 1/23/90).
Abatement Worker Annual Review (Certified 1/23/90).
Contractor/Supervisor (Certified 1/23/90).
Contractor/Supervisor Annual Review (Certified 1/23/90).

(xiv)(a) *Training Provider:* Georgia Institute of Technology/GTRI.
Address: 151 6th St., Atlanta, GA 30332, Contact: Mark Demyanek, Phone: (404) 894-3806.

(b) *Approved Courses:*
Abatement Worker (Certified 7/22/88).
Abatement Worker Annual Review (Certified 2/14/89).
Contractor/Supervisor (Certified 7/22/88).
Contractor/Supervisor Annual Review (Certified 2/14/89).

(xv)(a) *Training Provider:* Harvard School of Public Health.
Address: 677 Huntington Ave., Boston, MA 02115, Contact: Louis DiBerardinis, Phone: (617) 732-1171.

(b) *Approved Courses:*
Abatement Worker (Certification Pending).
Contractor/Supervisor (Certification Pending).

(xvi)(a) *Training Provider:* Heat & Frost Insulation Union Local No. 6.
Address: 56 Roland St., Boston, MA 02129, Contact: Anthony Pistorino, Phone: (617) 625-6666.

(b) *Approved Courses:*
Abatement Worker (Certified 3/2/89).
Contractor/Supervisor (Certified 3/2/89).

(xvii)(a) *Training Provider:* Hygeia, Inc.
Address: 303 Bear Hill Rd., Waltham, MA 02154, Contact: Cynthia Whalen, Phone: (617) 890-4999.

(b) *Approved Courses:*
Abatement Worker (Certified 1/31/89).
Abatement Worker Annual Review (Certified 3/6/90).
Contractor/Supervisor (Certified 12/7/89).
Contractor/Supervisor Annual Review (Certified 3/6/90).

(xviii)(a) *Training Provider:*
Hygienetics, Inc.
Address: 150 Causeway St., Boston, MA 02114, Contact: Russell Matthews, Phone: (617) 723-4664.

(b) *Approved Courses:*
Abatement Worker (Certified 5/10/89).
Abatement Worker Annual Review (Certified 5/10/89).
Contractor/Supervisor (Certified 5/10/89).
Contractor/Supervisor Annual Review (Certified 5/10/89).

(xix)(a) *Training Provider:* Institute for Environmental Education.
Address: 500 West Cummings Pk., Suite 3650, Woburn, MA 01801, Contact: Starla L. Engelhardt, Phone: (617) 935-7370.

(b) *Approved Courses:*
Abatement Worker (Certified 9/9/87).
Abatement Worker Annual Review (Certified 5/8/89).
Contractor/Supervisor (Certified 9/9/87).
Contractor/Supervisor Annual Review (Certified 5/8/89).

(xx)(a) *Training Provider:* Mystic Air Quality Consultants.
Address: 1085 Buddington Rd., Groton, CT 06340, Contact: Christopher Eident, Phone: (203) 449-8903.

(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 1/29/90).
Contractor/Supervisor (Certified 1/31/89).
Contractor/Supervisor Annual Review (Certified 1/29/90).

(xxi)(a) *Training Provider:* NAACO.
Address: 790 Turnpike St., North Andover, MA 01845, Contact: Martin Levitt, Phone: (508) 681-8711.

(b) *Approved Courses:*
Abatement Worker (Certified 4/28/88).
Abatement Worker Annual Review (Certified 4/3/89).
Contractor/Supervisor Annual Review (Certified 4/3/89).

(xxii)(a) *Training Provider:* National Asbestos Council (NAC), Training Dept.
Address: 1777 Northeast Expressway, Suite 150, Atlanta, GA 30329, Contact: Tom Laubenthal, Phone: (404) 633-2622.

(b) *Approved Course:*
Abatement Worker (Certified 9/5/86).

(xxiii)(a) *Training Provider:* National Training Fund/Workers Institute for Safety & Health (WISH).
Address: 1126 16th St., NW., Washington, DC 20036, Contact: Mathew Gillen, Phone: (202) 887-1980.

(b) *Approved Courses:*
Abatement Worker (Certified 1/31/89).
Abatement Worker Annual Review (Certified 1/31/89).
Contractor/Supervisor (Certified 1/31/89).
Contractor/Supervisor Annual Review (Certified 1/31/89).

(xxiv)(a) *Training Provider:* New England Laborers Training Trust Fund.
Address: 37 East St., Hopkinton, MA 01748, Contact: James Merloni, Phone: (508) 435-6316.

(b) *Approved Courses:*
Abatement Worker (Certified 7/1/86).
Abatement Worker Annual Review (Certified 2/15/89).
Contractor/Supervisor Annual Review (Certified 2/15/89).

(xxv)(a) *Training Provider:* Quality Control Services, Inc.
Address: 10 Lowell Junction Rd., Andover, MA 01810, Contact: Ajay Pathak, Phone: (508) 475-0623.

(b) *Approved Courses:*
Abatement Worker (Certified 4/27/88).
Abatement Worker Annual Review (Certified 3/10/89).
Contractor/Supervisor (Certified 4/27/88).
Contractor/Supervisor Annual Review (Certified 3/10/89).

South Dakota

(21)(a) *State Agency:* Dept. of Water & Natural Resources Division of Air Quality & Solid Waste, Address: Joe Foss Building, 523 East Capitol St., Pierre, SD 57501, Contact: Bob McDonald, Phone: (605) 773-3153.

(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 9/15/88).
Contractor/Supervisor (full from 9/15/88).
Inspector/Management Planner (full from 9/15/88).
Project Designer (full from 9/15/88).

(i)(a) *Training Provider:* ATC Environmental.
Address: 1515 East 10th St., Sioux Falls, SD 57701, Contact: Jim Stout, Phone: (605) 338-0555.

(b) *Approved Courses:*
Abatement Worker (Certified 2/6/90).

Contractor/Supervisor (Certified 2/6/90).
Inspector/Management Planner (Certified 2/6/90).

(ii)(a) *Training Provider:* Asbestos Consulting & Training Systems.
Address: 903 NW. 6th Ave., Fort Lauderdale, FL 33311, Contact: Marl Knick, Phone: (305) 524-7208.

(b) *Approved Courses:*
Abatement Worker (Certified 6/20/90).
Abatement Worker Annual Review (Certified 6/20/90).
Contractor/Supervisor (Certified 6/20/90).
Contractor/Supervisor Annual Review (Certified 6/20/90).

(iii)(a) *Training Provider:* Black Hills Special Services Cooperative.
Address: Box 218, Sturgis, SD 57784, Contact: Steve Miller, Phone: (605) 347-4467.

(b) *Approved Courses:*
Abatement Worker (Certified 3/22/89).
Abatement Worker Annual Review (Certified 8/9/88).
Contractor/Supervisor (Certified 3/22/89).
Contractor/Supervisor Annual Review (Certified 8/9/88).
Inspector/Management Planner (Certified 3/22/89).
Inspector/Management Planner Annual Review (Certified 2/26/90).
Project Designer Annual Review (Certified 12/7/90).

(iv)(a) *Training Provider:* Cleveland Environmental Services, Inc.
Address: 1400 Harrison Avenue, P.O. Box 14643, Cleveland, OH 45214, Contact: Eugene B. Rose, Phone: (513) 921-1160.

(b) *Approved Courses:*
Abatement Worker (Certified 9/10/90).
Abatement Worker Annual Review (Certified 9/10/90).

(v)(a) *Training Provider:* Enviro-safe Inc.
Address: P.O. Box 328, Wakonda, SD 57073, Contact: John Mathrol, Phone: (605) 267-2539.

(b) *Approved Courses:*
Abatement Worker (Certified 2/28/89 to 1/1/90 only).
Contractor/Supervisor (Certified 2/28/89 to 1/1/90 only).
Inspector/Management Planner (Certified 2/28/89 to 1/1/90 only).

(vi)(a) *Training Provider:* Fargo - Moorhead Carpenters Joint Apprenticeship & Training Committee.
Address: 3002 1st Ave., N., Fargo, ND 58102, Contact: Raymond Such, Phone: (701) 235-4981.

(b) *Approved Courses:*
Abatement Worker (Certified 4/20/89).
Abatement Worker Annual Review (Certified 4/25/90).
Contractor/Supervisor (Certified 4/20/89).
Contractor/Supervisor Annual Review (Certified 4/25/90).

(vii)(a) *Training Provider:* Fox & Fox, Inc.
Address: 1904 Willow Creek Rd., Casper, WY 82604, Contact: David Fox, Phone: (307) 234-0084.

(b) *Approved Courses:*
Abatement Worker (Certified 1/29/90).
Abatement Worker Annual Review (Certified 1/29/90).
Contractor/Supervisor (Certified 1/29/90).
Contractor/Supervisor Annual Review (Certified 1/29/90).

(viii)(a) *Training Provider:* Iowa Laborers Training Fund.
Address: 5806 Meredith Ave., Suite C, Des Moines, IA 50322, Contact: Jack Jones, Phone: (515) 270-6965.

(b) *Approved Course:*
Abatement Worker (Certified 3/22/88).

(ix)(a) *Training Provider:* National Asbestos Training Center, University of Kansas.
Address: 6600 College Blvd., Suite 315, Overland Park, KS 66211, Contact: Karen Wilson, Phone: (913) 491-0181.

(b) *Approved Courses:*
Abatement Worker (Certified 4/3/90).
Abatement Worker Annual Review (Certified 4/3/90).
Contractor/Supervisor (Certified 4/3/90).
Contractor/Supervisor Annual Review (Certified 4/3/90).
Inspector/Management Planner Annual Review (Certified 4/3/90).

(x)(a) *Training Provider:* Pickering Environmental.
Address: 1750 Madison Ave., Memphis, TN 38104, Contact: David Wright, Phone: (901) 726-0810.

(b) *Approved Course:*
Inspector/Management Planner (Certified 2/8/89).

(xi)(a) *Training Provider:* South Dakota State University, College of Engineering.
Address: P.O. Box 2218, Brookings, SD 57007-0597, Contact: James Ceglian, Phone: (605) 688-4107.

(b) *Approved Courses:*
Abatement Worker (Certified 5/18/88).
Abatement Worker Annual Review (Certified 9/8/88).
Contractor/Supervisor (Certified 5/18/88).
Contractor/Supervisor Annual Review (Certified 9/8/88).
Inspector/Management Planner (Certified 5/18/88).
Inspector/Management Planner Annual Review (Certified 9/8/88).

Utah

(22)(a) *State Agency:* Utah Dept. of Health Bureau of Air Quality, Address: 1950 West North Temple, P.O. Box 16690, Salt Lake City, UT 84116-0690, Contact: F. Burnell Cordner, Phone: (801) 536-4000.

(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 7/8/89).
Contractor/Supervisor (full from 7/8/89).
Inspector/Management Planner (full from 7/8/89).
Project Designer (full from 7/8/89).

(i)(a) *Training Provider:* Asbestos Training Associates (ATA).
Address: 10256 S. Flanders Road, Sandy, UT 84092, Contact: Joseph B. Liqori, Phone: (801) 571-4116.

(b) *Approved Course:*
Contractor/Supervisor (Certified 4/5/90).

(ii)(a) *Training Provider:* Industrial Health Incorporated.
Address: 640 E. Wilmington Ave., Salt Lake City, UT 84106, Contact: Donald Morano, Phone: (801) 466-2223.

(b) *Approved Courses:*
Abatement Worker (Certified 1/10/89).
Contractor/Supervisor (Certified 4/24/89).
Inspector/Management Planner (Certified 3/23/89).

(iii)(a) *Training Provider:* JKL Asbestos, Inc.
Address: P.O. Box 406, Lehi, UT 84043, Contact: James K. Libberton, Phone: (801) 768-4231.

(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 7/2/90).
Contractor/Supervisor Annual Review (Certified 7/2/90).

(iv)(a) *Training Provider:* National Education Program for Asbestos (NEPA).
Address: 2863 West 8750 South, West Jordan, UT 84088, Contact: Mark A. Kirk, Phone: (801) 565-1400.

(b) *Approved Courses:*
Contractor/Supervisor (Certified 4/12/89).
Contractor/Supervisor Annual Review (Certified 5/22/89).

(v)(a) *Training Provider:* Power Master Incorporated.

Address: 13205 South State St., Draper, UT 84020, Contact: Brian Welty, Phone: (801) 571-9321.

(b) *Approved Course:*

Abatement Worker (Certified 7/29/88).

(vi)(a) *Training Provider:* Rocky Mountain Center for Occupational and Environmental Health.

Address: University of Utah, Building 512, Salt Lake City, UT 84112, Contact: Jeffery S. Lee, Phone: (801) 581-5710.

(b) *Approved Courses:*

Abatement Worker (Certified 2/8/89).
Abatement Worker Annual Review (Certified 2/13/89).
Contractor/Supervisor (Certified 10/7/88).
Contractor/Supervisor Annual Review (Certified 6/7/88).
Inspector/Management Planner Annual Review (Certified 12/15/88).
Project Designer (Certified 10/7/88).

(vii)(a) *Training Provider:* S & H Asbestos Consultants, Inc.

Address: 4980 Holladay Blvd., Salt Lake City, UT 84117, Contact: Stanley Christiansen, Phone: (801) 277-2323.

(b) *Approved Courses:*

Abatement Worker (Certified 8/12/88).
Abatement Worker Annual Review (Certified 7/28/89).

(viii)(a) *Training Provider:* Utah Carpenters Joint Apprenticeship & Training Committee.

Address: 2261 S. Redwood Rd., Suite J, Salt Lake City, UT 84119, Contact: Ken Mayne, Phone: (801) 972-5147.

(b) *Approved Courses:*

Abatement Worker (Certified 10/16/89).
Contractor/Supervisor (Certified 10/16/89).

(ix)(a) *Training Provider:* Utah Correctional Industries.

Address: P.O. Box 850, Draper, UT 84020-850, Contact: Vic Middleton, Phone: (801) 571-9264.

(b) *Approved Courses:*

Contractor/Supervisor (Certified 9/25/89).
Contractor/Supervisor Annual Review (Certified 4/5/90).

Virginia

(23)(a) *State Agency:* Commonwealth of Virginia Dept. of Commerce, Address: 3600 West Broad St., Richmond, VA 23230-4917, Contact: Nelle P. Hotchkiss, Phone: (804) 367-8595.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 7/1/88).
Contractor/Supervisor (full from 7/1/88).
Inspector/Management Planner (full from 7/1/88).
Project Designer (full from 7/1/88).

(i)(a) *Training Provider:* Aerosol Monitoring & Analysis.

Address: The Commons Corporate Center, 1341 Ashton Rd., Suite A, Hanover, MD 21076, Contact: Steve Blizzard, Phone: (800) 221-1745.

(b) *Approved Courses:*

Abatement Worker Annual Review (Certified 10/18/89).
Contractor/Supervisor (Certified 10/31/89).
Contractor/Supervisor Annual Review (Certified 10/18/89).
Inspector/Management Planner (Certified 10/18/89).

(ii)(a) *Training Provider:* Alice Hamilton Occupational Health Center.

Address: 410 7th St., SE., 2nd Floor, Washington, DC 20003, Contact: Brian Christopher, Phone: (202) 543-0005.

(b) *Approved Courses:*

Abatement Worker (Certified 3/2/88).
Abatement Worker Annual Review (Certified 1/1/89).
Contractor/Supervisor (Certified 3/2/88).
Contractor/Supervisor Annual Review (Certified 1/1/89).
Inspector/Management Planner (Certified 3/2/88).
Inspector/Management Planner Annual Review (Certified 3/1/89).

(iii)(a) *Training Provider:* Asbestos Analytical Association.

Address: 3208-B George Washington Hwy., Portsmouth, VA 23704, Contact: Carol Holden, Phone: (804) 397-0695.

(b) *Approved Courses:*

Abatement Worker (Certified 7/27/88).
Abatement Worker Annual Review (Certified 2/1/89).
Contractor/Supervisor (Certified 7/27/88).
Contractor/Supervisor Annual Review (Certified 2/1/89).
Inspector/Management Planner (Certified 7/27/88).
Inspector/Management Planner Annual Review (Certified 6/1/89).

(iv)(a) *Training Provider:* Asbestos Consulting & Training Systems.

Address: 903 Northwest Sixth Ave., Ft. Lauderdale, FL 33311, Contact: Mark Knick, Phone: (305) 524-7208.

(b) *Approved Courses:*

Abatement Worker (Certified 10/6/89).
Abatement Worker Annual Review (Certified 2/1/90).
Contractor/Supervisor (Certified 10/6/89).
Contractor/Supervisor Annual Review (Certified 2/1/90).

(v)(a) *Training Provider:* Asbestos Removal Corp. of Maryland.

Address: 521-D Pulaski Highway, Joppa, MD 21085, Contact: John Therappas, Phone: (301) 679-6062.

(b) *Approved Courses:*

Abatement Worker Annual Review (Certified 7/19/90).
Contractor/Supervisor Annual Review (Certified 7/19/90).

(vi)(a) *Training Provider:* Atlantic Environmental Resources.

Address: 10111-B Bacon Dr., Beltsville, MD 20705, Contact: John Profitt, Phone: (301) 595-1737.

(b) *Approved Courses:*

Abatement Worker Annual Review (Certified 7/19/90).
Contractor/Supervisor Annual Review (Certified 7/19/90).

(vii)(a) *Training Provider:* BCM Engineers, Inc.

Address: 108 St. Anthony St., Mobile, AL 36602, Contact: H. Conrad Freeman, Phone: (205) 433-3981.

(b) *Approved Courses:*

Inspector/Management Planner Annual Review (Certified 9/1/89).
Project Designer Annual Review (Certified 9/1/89).

(viii)(a) *Training Provider:* Barco, Inc.

Address: 2439 N. Charles St., Baltimore, MD 21218, Contact: Bart Harrison, Phone: (301) 889-7770.

(b) *Approved Courses:*

Abatement Worker Annual Review (Certified 11/19/90).
Contractor/Supervisor Annual Review (Certified 11/19/90).

(ix)(a) *Training Provider:* Biospherics, Inc.

Address: 12051 Indian Creek Ct., Beltsville, MD 20705, Contact: Jean Fisher, Phone: (301) 369-3900.

(b) *Approved Courses:*

Abatement Worker (Certified 9/13/88).
Abatement Worker Annual Review (Certified 4/1/89).
Contractor/Supervisor (Certified 9/13/88).
Contractor/Supervisor Annual Review (Certified 3/1/89).
Inspector/Management Planner (Certified 9/13/88).
Inspector/Management Planner Annual Review (Certified 3/1/89).

(x)(a) *Training Provider:* Briggs Assoc. Inc.

Address: 8325 Guilford Rd., Suite E, Columbia, MD 21046, Contact: J. Roos Voorhees, Phone: (301) 381-4434.

(b) *Approved Course:*

Abatement Worker (Certification Pending).

(xi)(a) *Training Provider:* Critical Environmental.

Address: 5815 Gulf Freeway, Houston, TX 77023, Contact: Ronald F. Dodson, Phone: (713) 921-8921.

(b) *Approved Courses:*

Abatement Worker (Certification Pending).
Contractor/Supervisor (Certification Pending).
Inspector/Management Planner (Certification Pending).

(xii)(a) *Training Provider:* E.I. DuPont DeNemours & Co., Inc.

Address: Spruance Plant, P.O. Box 27001, Richmond, VA 23261, Contact: Clarence Mihal, Phone: (804) 743-2948.

(b) *Approved Courses:*

Abatement Worker (Certified 5/11/88).
Abatement Worker Annual Review (Certified 2/1/89).
Contractor/Supervisor (Certified 5/11/88).
Contractor/Supervisor Annual Review (Certified 6/1/89).

(xiii)(a) *Training Provider:* EME, Inc.

Address: P.O. Box 8843, Greensboro, NC 27409, Contact: Russ Luther, Phone: (919) 855-5752.

(b) *Approved Course:*

Abatement Worker (Certified 4/1/90).

(xiv)(a) *Training Provider:* Environmental Specialties, Inc.

Address: P.O. Box 130, Hopewell, VA 23860, Contact: Lewis Stevenson, Phone: (804) 452-1212.

(b) *Approved Courses:*

Abatement Worker (Certified 5/1/89).
Abatement Worker Annual Review (Certified 6/1/89).
Contractor/Supervisor (Certified 5/1/89).
Contractor/Supervisor Annual Review (Certified 6/1/89).

(xv)(a) *Training Provider:* Fluor Daniel.

Address: The Daniel Bldg., 301 North Main St., Greenville, SC 29601, Contact: Rick Florence, Phone: (803) 298-2166.

(b) *Approved Courses:*

Abatement Worker (Certified 6/24/88).
Contractor/Supervisor (Certified 6/24/88).

(xvi)(a) *Training Provider:* GST Company.

Address: 50 Progress Ave., Zelienople, PA 16063, Contact: Norma Stanford, Phone: (412) 772-7488.

(b) *Approved Courses:*

Abatement Worker (Certified 6/1/89).
Abatement Worker Annual Review (Certified 7/1/89).
Contractor/Supervisor (Certified 6/1/89).
Contractor/Supervisor Annual Review (Certified 7/1/89).

(xvii)(a) *Training Provider:* Georgia Tech Research Group.

Address: Georgia Tech Institute of Technology, Atlanta, GA 30332, Contact: Vicki H. Ainslie, Phone: (404) 895-3806.

(b) *Approved Courses:*

Contractor/Supervisor (Certified 5/1/89).
Contractor/Supervisor Annual Review (Certified 4/1/89).

(xviii)(a) *Training Provider:* Global Waste System Inc.

Address: Smith Reynolds Airport Hangar 14, Winston Salem, NC 27105, Contact: Carl Reid, Phone: (919) 744-9382.

(b) *Approved Courses:*

Abatement Worker (Certified 3/2/90).
Abatement Worker Annual Review (Certified 3/1/90).
Contractor/Supervisor (Certified 3/2/90).
Contractor/Supervisor Annual Review (Certified 3/1/90).

(xix)(a) *Training Provider:* Hall-Kimbrell Environmental Services.

Address: 4840 West 15th St., P.O. Box 307, Lawrence, KS 66046, Contact: Steve Davis, Phone: (804) 270-7235.

(b) *Approved Courses:*

Abatement Worker (Certified 5/23/88).
Abatement Worker Annual Review (Certified 6/1/89).
Contractor/Supervisor (Certified 5/23/88).
Contractor/Supervisor Annual Review (Certified 6/1/89).
Inspector/Management Planner Annual Review (Certified 2/1/90).

(xx)(a) *Training Provider:* Harman Engineering Associates, Inc.

Address: 1550 Pumphrey Ave., Auburn, AL 36830, Contact: Dave Schrimsher, Phone: (205) 821-9250.

(b) *Approved Course:*

Abatement Worker (Certified 9/21/89).

(xxi)(a) *Training Provider:* Hazard Abatement Consultants.

Address: 5 Breechwood Rd., Hampton, VA 23666, Contact: Thomas Priesman, Phone: (804) 825-0302.

(b) *Approved Course:*

Abatement Worker (Certified 6/1/89).

(xxii)(a) *Training Provider:* Hercules Aerospace Co.

Address: Radford Army Ammunition Plant, Caller Service 1, Radford, VA 24141-0299, Contact: Lance Hudnall, Phone: (703) 639-7730.

(b) *Approved Courses:*

Abatement Worker Annual Review (Certified 12/19/90).
Contractor/Supervisor Annual Review (Certified 12/19/90).
Inspector Annual Review (Certified 10/30/90).

(xxiii)(a) *Training Provider:* Ind-Tra-Co., Ltd.

Address: 511 W. Grace St., Richmond, VA 23220, Contact: Ernest Drew, Phone: (804) 648-7836.

(b) *Approved Courses:*

Abatement Worker (Certified 3/7/88).
Abatement Worker Annual Review (Certified 3/1/89).
Contractor/Supervisor (Certified 3/7/88).
Contractor/Supervisor Annual Review (Certified 3/1/89).
Inspector/Management Planner (Certified 3/7/88).
Inspector/Management Planner Annual Review (Certified 3/1/89).

(xxiv)(a) *Training Provider:* Industrial Training & Support Services.

Address: P.O. Box 496, Lightfoot, VA 23090, Contact: Virginia Graham, Phone: (804) 565-3308.

(b) *Approved Courses:*

Abatement Worker (Certified 10/22/88).
Abatement Worker Annual Review (Certified 6/1/89).
Contractor/Supervisor (Certified 11/19/90).
Contractor/Supervisor Annual Review (Certified 6/1/89).

(xxv)(a) *Training Provider:* Institute for Environmental Education.

Address: 500 West Cummings Pk., Suite 3650, Woburn, MA 01801, Contact: Starla L. Engelhardt, Phone: (617) 935-7370.

(b) *Approved Courses:*

Abatement Worker (Certification Pending).
Abatement Worker Annual Review (Certified 2/1/90).
Contractor/Supervisor (Certification Pending).
Contractor/Supervisor Annual Review (Certified 12/1/89).
Inspector (Certification Pending).

(xxvi)(a) *Training Provider:* Jenkins Professionals Inc.

Address: 5502 Campbell Blvd., Suite F, Baltimore, MD 21236, Contact: Larry Jenkins, Phone: (301) 529-3553.

(b) *Approved Courses:*

Abatement Worker (Certified 12/27/89).
Contractor/Supervisor (Certified 12/27/89).

(xxvii)(a) *Training Provider:* Laborers District Council of Virginia Training Trust Fund

Address: 4191 Rochambeau Dr., Williamsburg, VA 23185, Contact: Roy Brightwell, Phone: (804) 564-8148.

(b) *Approved Courses:*

Abatement Worker (Certified 8/8/88).
Abatement Worker Annual Review (Certified 6/1/89).

(xxviii)(a) *Training Provider:* META.

Address: P.O. Box 1961, Lawrence, KS 66044, Contact: Katy Nitcher, Phone: (913) 842-6382.

(b) *Approved Courses:*

Abatement Worker Annual Review (Certified 3/1/90).
Contractor/Supervisor Annual Review (Certified 3/1/90).

(xxix)(a) *Training Provider:* Marcus Environmental.

Address: 6345 Courthouse Rd., P.O. Box 227, Prince George, VA 23875, Contact: Marshall Marcus, Phone: (804) 733-1855.

(b) *Approved Courses:*

Abatement Worker (Certified 2/13/89).
Contractor/Supervisor (Certified 2/13/89).

(xxx)(a) *Training Provider:* Maryland Center for Environmental Training-Charles County Community College.

Address: Mitchell Rd., P.O. Box 910, LaPlata, MD 20646-0910, Contact: Jake Bair, Phone: (301) 934-2251.

(b) *Approved Courses:*

Abatement Worker (Certified 5/19/89).
Abatement Worker Annual Review (Certified 6/1/89).
Contractor/Supervisor (Certified 5/19/89).
Contractor/Supervisor Annual Review (Certified 6/1/89).

(xxxi)(a) *Training Provider:* Medical College of Virginia, Dept. of Preventive Medicine.

Address: P.O. Box 212, Richmond, VA 23298, Contact: Leonard Vance, Phone: (804) 786-9785.

(b) *Approved Courses:*

Abatement Worker (Certified 12/8/87).
Abatement Worker Annual Review (Certified 4/1/89).
Contractor/Supervisor (Certified 3/8/87).
Contractor/Supervisor Annual Review (Certified 11/1/88).
Inspector/Management Planner (Certified 12/8/87).
Inspector/Management Planner Annual Review (Certified 1/1/89).
Project Designer (Certified 8/25/89).

(xxxii)(a) *Training Provider:* Metropolitan Laboratories.

Address: P.O. Box 8921, Norfolk, VA 23503, Contact: Ethel Holmes, Phone: (804) 583-9444.

(b) *Approved Courses:*

Abatement Worker (Certified 8/4/88).
Contractor/Supervisor (Certified 8/4/88).

(xxxiii)(a) *Training Provider:* National Asbestos Council, Inc.

Address: 1777 Northeast Expressway, Route 150, Atlanta, GA 30329, Contact: Cynthia Clavon, Phone: (404) 633-2622.

(b) *Approved Courses:*

Abatement Worker (Certified 3/1/88).
Abatement Worker Annual Review (Certified 10/1/89).

(xxxiv)(a) *Training Provider:* Norfolk Shipbuilding & Dry Dock Co.

Address: P.O. Box 2100, Norfolk, VA 23501, Contact: Thomas Beacham, Phone: (804) 494-2940.

(b) *Approved Courses:*

Abatement Worker (Certified 6/15/88).
Abatement Worker Annual Review (Certified 7/1/89).

(xxxv)(a) *Training Provider:* OMC.

Address: 4451 Parliament Place, Lanham, MD 20706, Contact: Ellen J. Kite, Phone: (301) 306-0632.

(b) *Approved Courses:*

Abatement Worker Annual Review (Certified 8/17/90).
Contractor/Supervisor (Certified 8/25/89).
Contractor/Supervisor Annual Review (Certified 8/17/90).

(xxxvi)(a) *Training Provider:* Old Dominion University.

Address: Office of Health Sciences, Norfolk, VA 23529, Contact: Shirley Glover, Phone: (804) 683-4256.

(b) *Approved Courses:*

Abatement Worker (Certified 6/8/88).
Abatement Worker Annual Review (Certified 5/1/89).
Contractor/Supervisor (Certified 6/8/88).
Contractor/Supervisor Annual Review (Certified 5/1/89).
Inspector/Management Planner (Certified 6/8/88).
Inspector/Management Planner Annual Review (Certified 4/1/89).

(xxxvii)(a) *Training Provider:* Quality Specialties, Inc.

Address: One Westover Park, 501 Westover Ave., Hopewell, VA 23860, Contact: Bowen Hyatt, Phone: (804) 748-9637.

(b) *Approved Course:*

Abatement Worker Annual Review (Certified 7/20/90).

(xxxviii)(a) *Training Provider:* Retra Services.

Address: 200 Oxford Blvd., Allison Park, PA 15101, Contact: David Sarvadi, Phone: (800) 229-8724.

(b) *Approved Courses:*

Abatement Worker (Certified 8/18/89).
Abatement Worker Annual Review (Certified 2/1/90).
Contractor/Supervisor (Certified 10/22/90).
Contractor/Supervisor Annual Review (Certified 2/1/90).

(xxxix)(a) *Training Provider:* Roy F. Weston, Inc.

Address: 1635 Pumphrey Ave., Auburn, AL 36830, Contact: Michael Skotnick, Phone: (205) 826-6100.

(b) *Approved Course:*

Inspector/Management Planner (Certified 12/27/89).

(xl)(a) *Training Provider:* S.G. Brown, Inc.

Address: 2701 Sonic Dr., Virginia Beach, VA 23334, Contact: George Torrence, Phone: (804) 468-0027.

(b) *Approved Courses:*

Abatement Worker (Certified 6/10/88).
Abatement Worker Annual Review (Certified 7/1/89).
Contractor/Supervisor Annual Review (Certified 7/1/89).

(xli)(a) *Training Provider:* State Council of Carpenters of Virginia.

Address: 3801 Jefferson Davis Hwy., Richmond, VA 23234, Contact: Frank Hollis, Phone: (804) 275-0701.

(b) *Approved Courses:*

Abatement Worker (Certified 8/31/89).
Contractor/Supervisor (Certified 8/31/89).

(xlii)(a) *Training Provider:* The Environmental Institute.

Address: Cobb Corporate Center/300, 350 Franklin Rd., Marietta, GA 30067, Contact: Rachel McCain, Phone: (404) 425-2000.

(b) *Approved Course:*

Contractor/Supervisor Annual Review (Certified 12/1/89).

(xliii)(a) *Training Provider:* The Francis L. Greenfield Institute.

Address: Route 6344, P.O. Box 217, Sterling, VA 22170, Contact: Bengamin Bostic, Phone: (703) 450-5950.

(b) *Approved Courses:*

Abatement Worker (Certified 10/10/88).
Abatement Worker Annual Review (Certified 10/1/89).

(xliv)(a) *Training Provider:* The Glaser Company.

Address: 200 Kanawha Terrace, St. Albans, WV 25177, Contact: Gina Silbaugh, Phone: (304) 722-2832.

(b) *Approved Courses:*

Abatement Worker Annual Review (Certified 6/1/90).

Contractor/Supervisor Annual Review (Certified 6/1/90).

(xlv)(a) *Training Provider:* Tidewater Community College.

Address: VA Beach Campus, 1700 College Cresent, Virginia Beach, VA 23456, Contact: Sam Lamb, Phone: (804) 427-7198.

(b) *Approved Course:*

Abatement Worker (Certified 3/21/89).

(xlvi)(a) *Training Provider:* University of Virginia National Asbestos Council Division of Continuing Education.

Address: 106 Midmont Lake, Charlottesville, VA 22903, Contact: Gregory Pels, Phone: (804) 924-7114.

(b) *Approved Course:*

Abatement Worker (Certified 3/7/88).

(xlvii)(a) *Training Provider:* Waco, Inc.

Address: 4407 Theodore Green Blvd., White Plains, MD 20695-0740, Contact: Wayne Cooper, Phone: (301) 870-3323.

(b) *Approved Courses:*

Abatement Worker (Certified 10/31/88).
Abatement Worker Annual Review (Certified 2/1/89).
Contractor/Supervisor (Certified 10/31/88).
Contractor/Supervisor Annual Review (Certified 2/1/89).

(xlviii)(a) *Training Provider:* White Lung Association.

Address: 1601 St. Paul St., Baltimore, MD 21202, Contact: James Fite, Phone: (301) 727-6029.

(b) *Approved Courses:*

Inspector/Management Planner (Certified 7/11/88).
Inspector/Management Planner Annual Review (Certified 2/1/90).

Washington

(24)(a) *State Agency:* Washington Department of Labor and Industries, Division of Industrial Safety and Health, Address: 300 West Harrison St., Seattle, WA 98119, Contact: James Catalano, Phone: (206) 281-5325.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (interim from 12/28/87).
Abatement Worker (full from 11/10/89).
Contractor/Supervisor (interim from 12/28/87).
Contractor/Supervisor (full from 11/10/89).

(i)(a) *Training Provider:* Asbestos Training Project/Workplace Resources.

Address: 1906 Southeast Pershing St., Portland, OR 97202, Contact: Wendy Wiles, Phone: (503) 233-7707.

(b) *Approved Courses:*

Abatement Worker (Certified 3/1/88).
Abatement Worker Annual Review (Certified 3/1/88).

(ii)(a) *Training Provider:* Bison Engineering/Research.

Address: 1020 S. 344th No. 204, Federal Way, WA 98003, Contact: Don Hurst, Phone: (206) 838-7261.

(b) *Approved Course:*

Abatement Worker (Certified 5/12/87 to 5/12/89 **only**).

(iii)(a) *Training Provider:* Carpenters-Employers Apprenticeship & Training Trust Fund of Western Washington.

Address: 1709 Hickox Rd., Mt. Vernon, WA 98273, Contact: Emil Lippert, Phone: (206) 428-2933.

(b) *Approved Courses:*

Abatement Worker (Certified 4/23/90).
Abatement Worker Annual Review (Certified 4/23/90).

(iv)(a) *Training Provider:* Chen-Northern, Inc.

Address: 600 South 25th St., P.O. Box 30615, Billings, MT 59107, Contact: Kathleen Smit, Phone: (406) 248-9282.

(b) *Approved Course:*

Abatement Worker (Certified 12/22/88 to 12/22/89 **only**).

(v)(a) *Training Provider:* Enviro-tec, Inc.

Address: 2825 - 152nd Ave. NE., Redmond, WA 98052, Contact: Lawrence Short, Phone: (206) 867-5111.

(b) *Approved Course:*

Abatement Worker (Certified 6/22/88 to 6/22/89 **only**).

(vi)(a) *Training Provider:* Environmental Health Sciences, Inc.

Address: 9 Lake Bellevue Bldg., Suite 104, Bellevue, WA 98005, Contact: Robert Gilmore, Phone: (206) 455-2959.

(b) *Approved Courses:*

Abatement Worker (Certified 3/1/88).
Abatement Worker Annual Review (Certified 3/1/88).
Contractor/Supervisor (Certified 3/1/88).

(vii)(a) *Training Provider:* Environmental Management, Inc.

Address: P.O. Box 91477, Anchorage, AK 99509, Contact: Kenneth Johnson, Phone: (907) 272-8056.

(b) *Approved Course:*

Abatement Worker (Certified 1/1/89 to 1/10/90 **only**).

(viii)(a) *Training Provider:* Environmental Management, Inc.

Address: P.O. Box 363, Wauna, WA 98395, Contact: Ray Donahue, Phone: (206) 857-3222.

(b) *Approved Course:*

Abatement Worker (Certified 1/10/89 to 1/10/90 **only**).

(ix)(a) *Training Provider:* Hall-Kimbrell Environmental Services, Inc.

Address: 5319 SW. Westgate, No. 239, Portland, OR 97221, Contact: Peter Clark, Phone: (503) 292-9406.

(b) *Approved Courses:*

Abatement Worker (Certified 6/1/88).
Abatement Worker Annual Review (Certified 6/1/88).

(x)(a) *Training Provider:* Hazcon, Inc.

Address: 9500 SW. Barbur Blvd., Suite 100, Portland, OR 97219, Contact: Harvey McGill, Phone: (503) 244-8045.

(b) *Approved Courses:*

Abatement Worker (Certified 3/1/88).
Abatement Worker Annual Review (Certified 3/1/88).
Contractor/Supervisor (Certified 11/1/89).

(xi)(a) *Training Provider:* Hazcon, Inc.

Address: 5950 Sixth Ave. S., No. 200, Seattle, WA 98108, Contact: Mike Krause, Phone: (206) 763-7364.

(b) *Approved Courses:*

Abatement Worker (Certified 3/1/86).
Abatement Worker Annual Review (Certified 3/1/86).
Contractor/Supervisor (Certified 11/1/89).

(xii)(a) *Training Provider:* Heavey Engineers, Inc.

Address: P.O. Box 832, Stevenson, WA 98648, Contact: Bernard Heavey, Phone: (509) 427-8936.

(b) *Approved Courses:*

Abatement Worker (Certified 11/7/87 to 8/1/89 **only**).
Abatement Worker Annual Review (Certified 7/1/88 to 8/1/89 **only**).

(xiii)(a) *Training Provider:* Long Services.

Address: 8025 10th Ave. S., P.O. Box C 81435, Seattle, WA 98018-4498, Contact: Michael Cole, Phone: (206) 763-8422.

(b) *Approved Course:*

Abatement Worker (Certified 8/5/85).

(xiv)(a) *Training Provider:* M & M Environmental, Inc.

Address: 3902 N. 34th St., Tacoma, WA 98407, Contact: Mike Reid, Phone: (206) 759-3443.

(b) *Approved Courses:*

Abatement Worker (Certified 9/1/86 to 2/4/90 **only**).
Abatement Worker Annual Review (Certified 1/1/89 to 2/4/90 **only**).

(xv)(a) *Training Provider:* NW Envirocon, Inc.

Address: 285 SW. 41 St., Renton, WA 98055, Contact: Matt Johnson, Phone: (206) 251-6033.

(b) *Approved Courses:*

Abatement Worker (Certified 1/1/88).
Abatement Worker Annual Review (Certified 1/1/88).

(xvi)(a) *Training Provider:* NW Envirocon, Inc.

Address: P.O. Box 169, Washoughal, WA 98671, Contact: Ed Hemsley, Phone: (206) 835-8570.

(b) *Approved Courses:*

Abatement Worker (Certified 1/1/88).
Abatement Worker Annual Review (Certified 1/1/88).

(xvii)(a) *Training Provider:* NW Laborers - Employers Training Trust Fund.

Address: 27055 Ohio Ave., Kingston, WA 98346, Contact: Harold Avery, Phone: (206) 297-3035.

(b) *Approved Courses:*

Abatement Worker (Certified 8/1/85).
Abatement Worker Annual Review (Certified 8/1/85).

(xviii)(a) *Training Provider:* NW Washington Painting, Drywall Joint Apprenticeship Committee.

Address: 6770 E. Marginal Way S., Seatle, WA 98108, Contact: Paul Norling, Phone: (206) 762-8332.

(b) *Approved Courses:*

Abatement Worker (Certified 5/25/88 to 6/30/89 only).
Abatement Worker Annual Review (Certified 5/25/88 to 6/30/89 only).

(xix)(a) *Training Provider:* Oregon, Southern Idaho, Wyoming, SW Washington Apprenticeship.

Address: Route 5, Box 325A, Corvallis, OR 97330, Contact: Larry Porter, Phone: (503) 745-5513.

(b) *Approved Courses:*

Abatement Worker (Certified 9/1/85).
Abatement Worker Annual Review (Certified 9/1/85).

(xx)(a) *Training Provider:* Prezant Associates, Inc.

Address: 711 6th Ave. N., Suite 200, Seattle, WA 98109, Contact: Sue Nelson, Phone: (206) 281-8858.

(b) *Approved Courses:*

Abatement Worker (Certified 6/1/88).
Abatement Worker Annual Review (Certified 6/1/88).
Contractor/Supervisor (Certified 9/1/89).

(xxi)(a) *Training Provider:* Seattle Area Roofers Joint Apprenticeship Committee.

Address: 2800 1st Ave., Rm. 318, Seattle, WA 98121, Contact: Pat Gilliland, Phone: (206) 728-2777.

(b) *Approved Course:*

Abatement Worker (Certified 1/26/90).

Wisconsin

(25)(a) *State Agency:* Department of Health & Social Services Division of Health, Address: 1414 East Washington Ave., Rm. 117, Madison, WI 53703, Contact: Regina Cowell, Phone: (608) 267-2289.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 11/10/89).
Contractor/Supervisor (full from 11/10/89).
Inspector (full from 11/10/89).
Inspector/Management Planner (full from 11/10/89).
Project Designer (full from 11/10/89).

(i)(a) *Training Provider:* Aerostat Environmental Engineering.

Address: P.O. Box 3096, 2817 Atchison Ave., Lawrence, KS 66046, Contact: Joseph Stimac, Phone: (913) 749-4747.

(b) *Approved Course:*

Project Designer (Certified 4/9/90).

(ii)(a) *Training Provider:* Biological & Environmental Control Laboratories Inc.

Address: 615 Front St., Toledo, OH 43605, Contact: James Burk, Phone: (419) 693-5307.

(b) *Approved Courses:*

Contractor/Supervisor (Certified 4/11/90).
Inspector/Management Planner (Certified 3/28/90).

(iii)(a) *Training Provider:* Brand Companies.

Address: 1420 Renaissance Dr., Park Ridge, IL 60068, Contact: Frank Barta, Phone: (708) 298-1200.

(b) *Approved Course:*

Abatement Worker (Certified 5/8/90).

(iv)(a) *Training Provider:* Daniel J. Hartwig & Associates.

Address: P.O. Box 80, Oregon, WI 53575, Contact: Naomi Gray, Phone: (608) 835-5781.

(b) *Approved Courses:*

Abatement Worker (Certified 6/14/90).
Abatement Worker Annual Review (Certified 3/2/90).
Contractor/Supervisor (Certified 6/14/90).
Contractor/Supervisor Annual Review (Certified 3/2/90).
Inspector/Management Planner (Certified 6/27/90).
Inspector/Management Planner Annual Review (Certified 2/26/90).

(v)(a) *Training Provider:* Environmental Rehab. Inc.

Address: 1030 Parkview Rd., Greenbay, WI 54304, Contact: Randy LaCrosse, Phone: (414) 337-0650.

(b) *Approved Courses:*

Abatement Worker (Certified 5/8/90).
Abatement Worker Annual Review (Certified 5/8/90).

(vi)(a) *Training Provider:* Good Armstrong and Associates.

Address: 7709 West Beloit Rd., Milwaukee, WI 53219, Contact: Bonnie Good, Phone: (414) 541-9740.

(b) *Approved Courses:*

Abatement Worker (Certified 3/29/90).
Abatement Worker Annual Review (Certified 6/1/90).
Contractor/Supervisor (Certified 3/29/90).
Contractor/Supervisor Annual Review (Certified 6/1/90).
Inspector/Management Planner (Certified 9/14/90).
Inspector/Management Planner Annual Review (Certified 9/14/90).

(vii)(a) *Training Provider:* Mayhew Environmental Training Associates, Inc. (META).

Address: 901 Kentucky, Suite 305, P.O. Box 786, Lawrence, KS 66044, Contact: Thomas Mayhew, Phone: (800) 444-6381.

(b) *Approved Courses:*

Abatement Worker (Certified 12/19/90).
Abatement Worker Annual Review (Certified 5/17/90).
Contractor/Supervisor (Certified 12/19/90).
Contractor/Supervisor Annual Review (Certified 8/20/90).

(viii)(a) *Training Provider:* Milwaukee Asbestos Information Center MAIC.

Address: 2224 S. Kinnickinnic Dr., Milwaukee, WI 53207, Contact: Tom Ortell, Phone: (414) 747-0700.

(b) *Approved Courses:*

Abatement Worker (Certified 7/30/90).
Abatement Worker Annual Review (Certified 10/15/90).
Contractor/Supervisor (Certified 7/30/90).
Contractor/Supervisor Annual Review (Certified 10/15/90).
Inspector/Management Planner (Certified 12/6/90).
Inspector/Management Planner Annual Review (Certified 12/6/90).
Project Designer (Certified 8/27/90).
Project Designer Annual Review (Certified 8/27/90).

(ix)(a) *Training Provider:* National Asbestos Council (NAC).

Address: 1777 Northeast Expressway, Suite 150, Atlanta, GA 30329, Contact. Raymond McQueen, Phone: (404) 633-2622.

(b) *Approved Courses:*

Abatement Worker (Certified 5/9/90).
Abatement Worker Annual Review (Certified 5/9/90).

(x)(a) *Training Provider:* Northland Environmental Services Inc.

Address: 15 Park Ridge Dr., Stevens Point, WI 54481, Contact: Robert Voborsky, Phone: (715) 341-9699.

(b) *Approved Courses:*

Abatement Worker (Certified 7/11/90).
Abatement Worker Annual Review (Certified 7/11/90).
Contractor/Supervisor (Certified 7/11/90).
Contractor/Supervisor Annual Review (Certified 7/11/90).
Inspector/Management Planner (Certified 10/22/90).
Inspector/Management Planner Annual Review (Certified 10/22/90).

(xi)(a) *Training Provider:* PSI-Hall-Kimbrell.

Address: 72 Executive Dr., Suite 434, Aurora, IL 60504-8137, Contact: Greg Corder, Phone: (708) 898-9414.

(b) *Approved Courses:*

Abatement Worker (Certified 7/27/90).
Abatement Worker Annual Review (Certified 7/27/90).
Contractor/Supervisor (Certified 7/27/90).
Contractor/Supervisor Annual Review (Certified 7/27/90).

(xii)(a) *Training Provider:* University of Wisconsin College of Engineering.

Address: 432 N. Lake Dr., Madison, WI 53706, Contact: Michael Waxman, Phone: (608) 262-2101.

(b) *Approved Courses:*

Project Designer (Certified 11/5/90).
Project Designer Annual Review (Certified 11/5/90).

(xiii)(a) *Training Provider:* Wisconsin Asbestos Advisory Team, Inc. (WAAT).

Address: North 9420 Lakeshore Dr., Van Dyne, WI 54979, Contact: Jerry Martin, Phone: (800) 236-8123.

(b) *Approved Courses:*

Abatement Worker (Certified 4/23/90).
Abatement Worker Annual Review (Certified 4/23/90).
Contractor/Supervisor (Certified 4/9/90).
Contractor/Supervisor Annual Review (Certified 4/9/90).

(xiv)(a) *Training Provider:* Wisconsin Laborers Training Center.

Address: P.O. Box 150, Route 1, Almond, WI 54909, Contact: Dean Jensen, Phone: (715) 366-8221.

(b) *Approved Courses:*

Abatement Worker (Certified 4/2/90).
Abatement Worker Annual Review (Certified 4/2/90).
Contractor/Supervisor (Certified 10/16/90).
Contractor/Supervisor Annual Review (Certified 4/2/90).

EPA-Approved Training Courses

REGION I -- Boston, MA

Regional Asbestos Coordinator: James Bryson, EPA, Region I, Air and Management Division (APT-2311), JFK Federal Building, Boston, MA 02203. (617) 565-3635, (FTS) 835-3835.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region I training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Applied Occupational Health Systems.

Address: P.O. Box 894, Concord, NH 03301, Contact: Karen Long, Phone: (603) 228-3610.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/13/90).
Abatement Worker Refresher Course (contingent from 7/20/90).
Contractor/Supervisor (contingent from 3/13/90).
Contractor/Supervisor Refresher Course (contingent from 7/20/90).
Inspector/Management Planner (contingent from 1/29/90).
Inspector/Management Planner Refresher Course (contingent from 7/19/90).

(2)(a) *Training Provider:* Brooks Safe & Sound, Inc.

Address: 44 Codfish Ln., Weston, CT 06883, Contact: Keith Brooks, Phone: (203) 226-6970.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/27/89).
Abatement Worker Refresher Course (contingent from 11/27/89).
Contractor/Supervisor (contingent from 11/27/89).
Contractor/Supervisor Refresher Course (contingent from 11/27/89).
Inspector/Management Planner (contingent from 11/1/89).
Inspector/Management Planner Refresher Course (contingent from 11/1/89).

(3)(a) *Training Provider:* Con-Test, Inc.

Address: P.O. Box 591, East Longmeadow, MA 01028, Contact: Brenda Bolduc, Phone: (413) 525-1198.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/2/87).
Abatement Worker Refresher Course (full from 11/22/88).
Contractor/Supervisor (contingent from 10/2/87).
Contractor/Supervisor Refresher Course (contingent from 10/2/87).
Contractor/Supervisor Refresher Course (full from 12/21/88).
Inspector/Management Planner (contingent from 10/2/87).
Inspector/Management Planner Refresher Course (contingent from 10/2/87).
Inspector/Management Planner Refresher Course (full from 2/1/89).

(4)(a) *Training Provider:* Ecosystems, Inc.

Address: 2 Deerwood Rd., Westport, CT 06880, Contact: Richard Doyle, Phone: (203) 226-4421.

(b) *Approved Course:*

Contractor/Supervisor (contingent from 10/5/87).

(5)(a) *Training Provider:* Enviromed Services, Inc.

Address: 25 Science Park, New Haven, CT 06511, Contact: Lawrence J. Cannon, Phone: (203) 786-5580.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/8/88).
Abatement Worker (full from 1/12/90).
Abatement Worker Refresher Course (contingent from 6/19/89).
Contractor/Supervisor (contingent from 2/23/89).
Contractor/Supervisor (full from 1/12/90).
Contractor/Supervisor Refresher Course (contingent from 6/19/89).
Inspector/Management Planner (contingent from 1/30/89).

(6)(a) *Training Provider:* Environmental Training Services Inc.

Address: 62-H Montvale Pl., Stoneham, MA 02180, Contact: Maryann Martin, Phone: (617) 279-0855.

(b) *Approved Course:*

Abatement Worker (contingent from 4/22/88).

(7)(a) *Training Provider:* Hygienetics, Inc.

Address: 150 Causeway St., Boston, MA 02114, Contact: Mary Beth Carver, Phone: (617) 723-4664.

(b) *Approved Course:*

Inspector (contingent from 10/2/87).

(8)(a) *Training Provider:* Industrial Health & Safety Consultants, Inc.

Address: 915 Bridgeport Ave., Shelton, CT 06484, Contact: Angela D. Rath, Phone: (203) 929-1131.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/15/89).
Abatement Worker Refresher Course (contingent from 6/19/89).

Contractor/Supervisor (contingent from 5/12/89).
Contractor/Supervisor Refresher Course (contingent from 6/19/89).
Inspector/Management Planner (contingent from 11/1/89).
Inspector/Management Planner Refresher Course (contingent from 11/1/89).

(9)(a) *Training Provider:* Institute for Environmental Education.

Address: 500 West Cummings Pk, Suite 3650, Woburn, MA 01801, Contact: Starla L. Engelhardt, Phone: (617) 935-7370.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/28/88).
Abatement Worker Refresher Course (full from 11/3/88).
Contractor/Supervisor (full from 9/18/87).
Contractor/Supervisor Refresher Course (full from 11/3/88).
Inspector/Management Planner (contingent from 10/2/87).
Inspector/Management Planner Refresher Course (contingent from 10/31/88).
Project Designer (contingent from 2/28/89).
Project Designer (full from 6/7/90).
Project Designer Refresher Course (contingent from 8/8/89).
Project Designer Refresher Course (full from 4/5/90).

(10)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 33.

Address: 15 South Elm St., Wallingford, CT 06492, Contact: Joseph V. Soli, Phone: (203) 265-3547.

(b) *Approved Course:*

Contractor/Supervisor (contingent from 7/27/88).

(11)(a) *Training Provider:* Maine Labor Group on Health, Inc.

Address: P.O. Box V, Augusta, ME 04332-1042, Contact: Diana White, Phone: (207) 622-7823.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/11/87).
Abatement Worker (full from 3/22/90).
Abatement Worker Refresher Course (contingent from 10/17/88).
Abatement Worker Refresher Course (full from 5/25/90).
Contractor/Supervisor (contingent from 5/18/87).
Contractor/Supervisor (full from 3/2/90).
Contractor/Supervisor Refresher Course (full from 3/26/88).

(12)(a) *Training Provider:* New England Laborers Training Trust Fund.

Address: Route 97 & Murdock Rd., P.O. Box 77, Pomfret Center, CT 06259, Contact: Gennaro Lepore, Phone: (203) 974-1455.

(b) *Approved Course:*

Abatement Worker (contingent from 5/25/89).

(13)(a) *Training Provider:* New England Laborers Training Trust Fund.

Address: 37 East St., Hopkinton, MA 01748-2699, Contact: Jim Merloni, Jr., Phone: (617) 435-6313.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/5/87).
Abatement Worker Refresher Course (contingent from 5/20/88).

(14)(a) *Training Provider:* Radiation Safety Associates, Inc.

Address: P.O. Box 107, 10 Pendleton Dr., Hebron, CT 06248, Contact: K. Paul Steinmeyer, Phone: (203) 228-0487.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 5/16/89).
Inspector/Management Planner (contingent from 5/16/89).

(15)(a) *Training Provider:* Tufts University Asbestos Information Center.

Address: 474 Boston Ave., Medford, MA 02155, Contact: Anne Chabot, Phone: (617) 381-3531.

(b) *Approved Courses:*

Contractor/Supervisor (interim from 9/1/85 to 5/31/87).
Contractor/Supervisor (full from 6/1/87).
Inspector/Management Planner (full from 11/16/87).

REGION II -- Edison, NJ

Acting Regional Asbestos Coordinator: Albert Kramer, EPA, Region II, 2890 Woodbridge Ave., Raritan Depot, Bldg. 5, (MS-500), Edison, NJ 08837. (201) 321-6793, (FTS) 340-6793.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region II training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* AAC Contracting, Inc.

Address: 243 Paul Rd., Rochester, NY 14624, Contact: Mario DiNottia, Phone: (716) 328-7010.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/8/89).
Abatement Worker (full from 1/25/90).

(2)(a) *Training Provider:* ATC Environmental, Inc.

Address: 104 East 25th St., New York, NY 10010, Contact: David V. Chambers, Phone: (212) 353-8280.

(b) *Approved Courses:*

Abatement Worker (full from 11/7/88).
Contractor/Supervisor (full from 11/7/88).
Inspector/Management Planner (contingent from 6/5/88).
Inspector/Management Planner (full from 3/6/89).

(3)(a) *Training Provider:* Abatement Safety Training Institute.

Address: 323 West 39th St., New York, NY 10018, Contact: Rosemarie Bascianilli, Phone: (212) 629-8400.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/25/88).
Abatement Worker (full from 12/11/89).
Contractor/Supervisor (contingent from 10/25/88).
Contractor/Supervisor (full from 2/9/90).
Inspector/Management Planner (contingent from 3/9/88).
Inspector/Management Planner (full from 3/21/88).
Inspector/Management Planner Refresher Course (contingent from 1/11/89).
Inspector/Management Planner Refresher Course (full from 1/30/89).

(4)(a) *Training Provider:* Adelaide Environmental Health Associates.

Address: 61 Front St., Binghamton, NY 13905-4705, Contact: William S. Carter, Phone: (607) 722-6839.

(b) *Approved Course:*

Abatement Worker (contingent from 11/14/88).

(5)(a) *Training Provider:* Albany Environmental Technologies (A.E. Technologies).

Address: P.O. Box 1346, Schenectady, NY 12301, Contact: Kevin Pilgrim, Phone: (518) 374-4801.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/8/89).
Contractor/Supervisor (contingent from 6/8/89).

(6)(a) *Training Provider:* Allegheny Council on Occupational Health.

Address: 100 East Second St., Suite 3, Jamestown, NY 14701, Contact: Linda Berlin, Phone: (716) 488-0720.

(b) *Approved Course:*

Abatement Worker (contingent from 7/26/89).

(7)(a) *Training Provider:* Allwash of Syracuse, Inc.

Address: P.O. Box 605, Syracuse, NY 13201, Contact: Paul D. Watson, Phone: (315) 454-4476.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/16/87).
Abatement Worker (full from 12/7/88).
Abatement Worker Refresher Course (contingent from 12/15/88).
Contractor/Supervisor (contingent from 1/30/89).
Contractor/Supervisor Refresher Course (contingent from 10/17/89).

(8)(a) *Training Provider:* Alternative Ways, Inc. Educational Services.

Address: Barclay Pavilion E, Suite 222, Route 70, Cherry Hill, NJ 08034, Contact: Linda A. Pardi, Phone: (609) 795-1991.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/11/88).
Abatement Worker (full from 12/1/89).
Contractor/Supervisor (contingent from 4/11/88).
Contractor/Supervisor (full from 12/1/89).
Inspector/Management Planner (contingent from 4/22/88).
Inspector/Management Planner (full from 5/26/88).
Inspector/Management Planner Refresher Course (contingent from 1/18/89).
Inspector/Management Planner Refresher Course (full from 2/14/90).

(9)(a) *Training Provider:* Anderson International.

Address: RD 2, North Main Street Extension, Jamestown, NY 14701, Contact: Sally L. Gould, Phone: (716) 664-4028.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/29/88).
Abatement Worker (full from 9/23/90).
Contractor/Supervisor (contingent from 12/29/88).
Contractor/Supervisor (full from 9/24/90).

(10)(a) *Training Provider:* Applied Respiratory Technology.

Address: P.O. Box 399, Hughsonville, NY 12537-0399, Contact: Paul M. Madigan, Phone: (914) 265-4330.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/11/88).
Abatement Worker (full from 11/28/88).
Abatement Worker Refresher Course (contingent from 10/19/88).
Abatement Worker Refresher Course (full from 11/21/90).
Contractor/Supervisor (contingent from 8/11/88).
Contractor/Supervisor (full from 11/28/88).
Contractor/Supervisor Refresher Course (contingent from 10/31/88).

(11)(a) *Training Provider:* Asbestos Control Management, Inc.

Address: 126 South Third St., Olean, NY 14760, Contact: Clar D. Anderson, Phone: (716) 372-6393.

(b) *Approved Course:*

Abatement Worker (contingent from 5/5/89).

(12)(a) *Training Provider:* Asbestos Training Academy, Inc.

Address: 218 Cooper Center, Pennsauken, NJ 08109, Contact: S. J. Sieracki, Phone: (609) 488-9200.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/15/88 to 12/28/90 only).
Abatement Worker (full from 11/7/88 to 12/28/90 only).
Contractor/Supervisor (contingent from 9/15/88 to 12/28/90 only).
Contractor/Supervisor (full from 11/7/88 to 12/28/90 only).
Inspector (contingent from 4/27/89 to 12/28/90 only).
Inspector (full from 1/24/90 to 12/28/90 only).

(13)(a) *Training Provider:* Asteco, Inc.

Address: 140 Telegraph Rd., P.O. Box 179, Middleport, NY 14105, Contact: Claudine R. Larocque, Phone: (716) 735-3894.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/1/88).
Abatement Worker (full from 4/13/88).
Abatement Worker Refresher Course (contingent from 12/20/88).

(14)(a) *Training Provider:* Astoria Industries, Inc.

Address: 538 Stewart Ave., Brooklyn, NY 11222, Contact: Gary DiPaolo, Jr., Phone: (718) 387-0011.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/8/88).
Abatement Worker (full from 4/18/88).
Contractor/Supervisor (contingent from 9/20/89).
Contractor/Supervisor (full from 1/4/90).
Inspector (contingent from 1/18/89).

(15)(a) *Training Provider:* BOCES-Albany-Schoharie-Schenectady Counties.

Address: 47 Cornell Rd., Latham, NY 12110, Contact: Charlene Vespi, Phone: (518) 786-3211.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/20/89).
Abatement Worker (full from 3/7/90).
Abatement Worker Refresher Course (contingent from 7/31/89).
Contractor/Supervisor (contingent from 7/20/89).
Inspector/Management Planner (full from 1/26/90).
Inspector/Management Planner Refresher Course (contingent from 10/6/89).

(16)(a) *Training Provider:* BOCES-Cayuga-Onondaga Counties.

Address: 234 South St. Rd., Auburn, NY 13021, Contact: Peter Pirnie, Phone: (315) 253-0361.

(b) *Approved Course:*

Abatement Worker (contingent from 6/17/88).

(17)(a) *Training Provider:* BOCES-Schuyler, Chemung, Tioga Counties.

Address: 431 Philo Road, Elmira, NY 14903, Contact: L. Eugene Ferro, Phone: (607) 739-3581.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/1/89).
Abatement Worker Refresher Course (contingent from 6/1/89).
Abatement Worker Refresher Course (full from 7/31/90).
Contractor/Supervisor (contingent from 6/1/89).
Contractor/Supervisor Refresher Course (contingent from 6/1/89).
Contractor/Supervisor Refresher Course (full from 7/31/90).
Inspector/Management Planner Refresher Course (contingent from 6/1/89).
Inspector/Management Planner Refresher Course (full from 4/18/90).

(18)(a) *Training Provider:* Board of Cooperative Educational Services (BOCES) No. 3.

Address: 507 Deer Park Rd., Dix Hills, NY 11746, Contact: Ciro Aiello, Phone: (516) 667-6000 Ext. 300.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/6/89).
Abatement Worker (full from 11/27/89).
Contractor/Supervisor (contingent from 2/6/89).

(19)(a) *Training Provider:* Board of Cooperative Educational Services of Rensselaer, Columbia & Green Counties of New York.

Address: Brookview Rd., P.O. Box 26, Brookview, NY 12026, Contact: Paul D. Bowler, Phone: (518) 732-7266.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/10/89).
Abatement Worker (full from 3/22/90).
Inspector/Management Planner (contingent from 4/10/89).

(20)(a) *Training Provider:* Board of Cooperative Educational Services-Suffolk County Boces 2, Adult Occup. & Continuing Ed.

Address: 375 Locust Ave., Oakdale, NY 11769, Contact: Edward J. Milliken, Phone: (516) 563-6159.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/27/89).
Abatement Worker (full from 10/11/90).
Abatement Worker Refresher Course (contingent from 6/16/89).
Abatement Worker Refresher Course (full from 5/17/90).
Contractor/Supervisor (contingent from 3/27/89).
Contractor/Supervisor (full from 5/9/90).
Contractor/Supervisor Refresher Course (contingent from 6/16/89).

(21)(a) *Training Provider:* Branch Services, Inc.

Address: 1255 Lakeland Ave., Bohemia, NY 11716, Contact: Luis Sanders, Phone: (516) 563-7300.

(b) *Approved Course:*

Abatement Worker (contingent from 6/1/89).

(22)(a) *Training Provider:* Buffalo Laborers Training Fund.

Address: 1370 Seneca St., Buffalo, NY 14210-1647, Contact: Victor J. Sansanese, Phone: (716) 825-0883.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/30/88).
Abatement Worker (full from 3/9/90).
Abatement Worker Refresher Course (contingent from 8/8/89).

(23)(a) *Training Provider:* Building Laborers Local Union No. 17.

Address: P.O. Box 252, Vails Gate, NY 12584, Contact: Victor P. Mandia, Phone: (914) 562-1121.

(b) *Approved Course:*

Abatement Worker (contingent from 10/31/88).

(24)(a) *Training Provider:* Calibrations, Inc.

Address: 802 Watervliet - Shaker Rd., Latham, NY 12110, Contact: James Percent, Phone: (518) 786-1865.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/28/88).
Abatement Worker (full from 12/5/88).
Abatement Worker Refresher Course (contingent from 3/6/89).
Abatement Worker Refresher Course (full from 9/6/90).
Contractor/Supervisor (contingent from 9/28/88).
Contractor 'Supervisor (full from 12/5/88).
Contractor/Supervisor Refresher Course (contingent from 3/6/89).
Inspector/Management Planner (contingent from 9/28/88).
Inspector/Management Planner (full from 1/26/90).
Inspector/Management Planner Refresher Course (contingent from 3/6/89).
Inspector/Management Planner Refresher Course (full from 5/2/90).
Project Designer (full from 5/23/88).
Project Designer Refresher Course (contingent from 3/6/89).

(25)(a) *Training Provider:* Comprehensive Analytical Group.

Address: 147 Midler Park Dr., Syracuse, NY 13206, Contact: Susan Richardson, Phone: (315) 432-1332.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/9/89).
Abatement Worker (full from 2/16/90).
Abatement Worker Refresher Course (contingent from 4/25/89).
Abatement Worker Refresher Course (full from 3/27/90).
Contractor/Supervisor (contingent from 3/29/89).
Contractor/Supervisor (full from 2/16/90).
Contractor/Supervisor Refresher Course (contingent from 5/18/89).
Contractor/Supervisor Refresher Course (full from 3/27/90).
Inspector (contingent from 10/27/89).

(26)(a) *Training Provider:* Ecology & Environment, Inc.

Address: Buffalo Corporate Center, 368 Pleasantview Dr., Lancaster, NY 14086, Contact: Thomas G. Siener, Phone: (716) 684-8060.

(b) *Approved Course:*

Inspector/Management Planner Refresher Course (contingent from 4/7/89).

(27)(a) *Training Provider:* Education & Training Fund Laborers' Local No. 91.

Address: 2556 Seneca Ave., Niagra Falls, NY 14305, Contact: Joel Cicero, Phone: (716) 297-6001.

(b) *Approved Courses:*

Abatement Worker (full from 7/27/87).
Abatement Worker Refresher Course (contingent from 10/20/88).
Abatement Worker Refresher Course (full from 10/22/88).

(28)(a) *Training Provider:* Edward O. Watts & Associates.

Address: 1331 North Forest Rd., Suite 340, Buffalo, NY 14221, Contact: Edward O. Watts, Phone: (716) 688-4827.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/4/89).
Abatement Worker (full from 1/20/90).
Abatement Worker Refresher Course (contingent from 3/3/89).
Contractor/Supervisor (contingent from 7/12/89).
Contractor/Supervisor (full from 1/20/90).
Contractor/Supervisor Refresher Course (contingent from 3/3/89).

(29)(a) *Training Provider:* General Bldg. Laborer's Local Union No. 66.

Address: 288 Middle Island Rd., Medford, NY 11763, Contact: Peter Purrazzella, Phone: (516) 696-2280.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/10/89).
Abatement Worker (full from 12/1/89).

(30)(a) *Training Provider:* Hazardous Waste Management Corp. Training Center of Buffalo, New York.

Address: 3816 Union Rd., Buffalo, NY 14225-5301, Contact: Donald Larder, Phone: (716) 634-3000.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/31/88).
Contractor/Supervisor (contingent from 10/31/88).

(31)(a) *Training Provider:* Hudson Asbestos Training Institute.

Address: 604 Manhattan Ave., Brooklyn, NY 11222, Contact: Henry Kawiorski, Phone: (718) 383-2656.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/30/89).
Abatement Worker (full from 3/13/89).
Contractor/Supervisor (contingent from 1/30/89).

(32)(a) *Training Provider:* Hunter College Asbestos Training Center.

Address: 425 East 25th St., New York, NY 10010, Contact: Jack Caravanos, Phone: (212) 481-7569.

(b) *Approved Courses:*

Abatement Worker (full from 7/1/88).
Abatement Worker Refresher Course (contingent from 6/20/89).
Contractor/Supervisor (full from 7/1/88).
Contractor/Supervisor Refresher Course (contingent from 6/20/89).
Inspector/Management Planner (contingent from 12/21/89).

(33)(a) *Training Provider:* Hygeia Research & Training.

Address: P.O. Box 4506, Utica, NY 13501, Contact: Richard A. Gigliotti, Phone: (315) 732-8567.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/9/88).
Abatement Worker (full from 5/6/88).

Abatement Worker Refresher Course (contingent from 12/12/88).
Abatement Worker Refresher Course (full from 1/17/90).
Contractor/Supervisor (contingent from 1/26/89).
Contractor/Supervisor (full from 3/8/90).
Contractor/Supervisor Refresher Course (contingent from 12/20/88).
Contractor/Supervisor Refresher Course (full from 1/17/90).

(34)(a) *Training Provider:* Institute of Asbestos Awareness.

Address: 2 Heitz Pl., Suite 1000, Hicksville, NY 11801, Contact: Henry R. Clegg, Phone: (516) 937-1600.

(b) *Approved Courses:*

Abatement Worker (full from 10/24/88 to 10/12/90 only).
Abatement Worker Refresher Course (contingent from 3/8/89 to 10/12/90 only).
Contractor/Supervisor (full from 10/24/88 to 10/12/90 only).
Contractor/Supervisor Refresher Course (contingent from 3/8/89 to 10/12/90 only).
Inspector/Management Planner (contingent from 9/28/88 to 10/12/90 only).
Inspector/Management Planner (full from 3/2/89 to 10/12/90 only).
Inspector/Management Planner Refresher Course (contingent from 3/8/89 to 10/12/90 only).
Project Designer (contingent from 9/26/89 to 10/12/90 only).

(35)(a) *Training Provider:* Institute of Asbestos Technology Corp.

Address: 5900 Butternut Dr., East Syracuse, NY 13057, Contact: Charles Kirch, Phone: (315) 437-1307.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/18/83).
Abatement Worker (full from 6/27/88).
Abatement Worker Refresher Course (contingent from 12/20/88).
Abatement Worker Refresher Course (full from 6/15/90).
Contractor/Supervisor (contingent from 4/7/89).
Contractor/Supervisor Refresher Course (contingent from 6/8/89).
Inspector/Management Planner (contingent from 10/19/89).
Inspector/Management Planner Refresher Course (contingent from 10/27/89).

(36)(a) *Training Provider:* Kaselaan & D'Angelo Associates, Inc.

Address: 220 Fifth Ave., New York, NY 10001, Contact: Lance Fredericks, Phone: (212) 216-6340.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/15/89).
Abatement Worker (full from 3/16/90).
Contractor/Supervisor (contingent from 3/27/89).
Inspector/Management Planner (contingent from 2/12/88).
Inspector/Management Planner (full from 3/7/88).
Inspector/Management Planner Refresher Course (full from 4/27/89).

(37)(a) *Training Provider:* Korean Asbestos Training Center.

Address: 46-12 Queens Blvd, Long Island City, NY 11104, Contact: Tchang S. Bahrk, Phone: (718) 361-6464.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/11/89).
Abatement Worker (full from 4/25/90).
Abatement Worker Refresher Course (contingent from 5/22/89).
Abatement Worker Refresher Course (full from 4/19/90).
Contractor/Supervisor (contingent from 5/11/89).
Contractor/Supervisor (full from 5/19/90).
Contractor/Supervisor Refresher Course (contingent from 5/22/89).

(38)(a) *Training Provider:* Laborers Local Union No. 214 of Oswego New York & Vicinity Training & Education Fund.

Address: 23 Mitchell St., Oswego, NY 13126, Contact: John T. Shannon, Phone: (315) 343-8553.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/1/88).
Abatement Worker (full from 1/23/89).
Abatement Worker Refresher Course (contingent from 2/15/89).
Contractor/Supervisor (contingent from 10/7/89).

(39)(a) *Training Provider:* Lozier Architects/Engineers.

Address: 600 Perinton Hills, Fairport, NY 14450, Contact: Dyke Coyne, Phone: (716) 223-7610.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/12/89).
Abatement Worker Refresher Course (contingent from 7/12/89).

(40)(a) *Training Provider:* McDonnell-Gamble Environmental Services, Inc.

Address: 444 Park Ave. South, 5th Fl., Suite 503, New York, NY 10016, Contact: Yelena Goodman, Phone: (212) 545-1122.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/15/88).
Abatement Worker (full from 12/5/88).
Abatement Worker Refresher Course (contingent from 8/25/89).
Abatement Worker Refresher Course (full from 3/7/90).
Contractor/Supervisor (contingent from 10/18/88).
Contractor/Supervisor (full from 12/5/88).

(41)(a) *Training Provider:* Monroe Community College of Rochester, New York.

Address: P.O. Box 9720, Rochester, NY 14623-0720, Contact: Dusty Swanger, Phone: (716) 272-9839.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/7/88).
Abatement Worker (full from 4/26/89).

(42)(a) *Training Provider:* National Asbestos Training Institute (NATI).

Address: 1776 Bloomsbury Ave., Ocean, NJ 07712, Contact: Doris L. Adler, Phone: (201) 918-0610.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/3/89).
Abatement Worker (full from 12/1/89).
Abatement Worker Refresher Course (contingent from 10/20/89).
Abatement Worker Refresher Course (full from 1/31/90).
Contractor/Supervisor (contingent from 11/3/89).
Contractor/Supervisor (full from 12/1/89).
Contractor/Supervisor Refresher Course (contingent from 10/20/89).
Contractor/Supervisor Refresher Course (full from 1/31/90).
Inspector/Management Planner (contingent from 6/13/88).
Inspector/Management Planner (full from 4/17/89).
Inspector/Management Planner Refresher Course (contingent from 5/25/89).
Inspector/Management Planner Refresher Course (full from 1/31/90).
Project Designer (contingent from 11/3/89).
Project Designer (full from 2/7/90).
Project Designer Refresher Course (contingent from 10/20/89).
Project Designer Refresher Course (full from 7/13/90).

(43)(a) *Training Provider:* National Institute on Abatement Science & Technology (NIAST).

Address: 114 West State St., P.O. Box 1780, Trenton, NJ 08607-1780, Contact: Glenn W. Phillips, Phone: (800) 422-2836.

(b) *Approved Courses:*

Inspector (contingent from 3/8/88).
Inspector (full from 4/11/88).

(44)(a) *Training Provider:* New York University School of Continuing Education.

Address: 11 West 42nd St., New York, NY 10036, Contact: Charles Schwartz, Phone: (212) 790-1647.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/18/89).
Abatement Worker (full from 11/17/89).
Abatement Worker Refresher Course (contingent from 6/8/89).
Contractor/Supervisor (contingent from 5/18/89).
Contractor/Supervisor (full from 11/17/89).
Contractor/Supervisor Refresher Course (contingent from 6/8/89).
Inspector/Management Planner (contingent from 5/18/89).
Inspector/Management Planner (full from 12/8/89).
Inspector/Management Planner Refresher Course (contingent from 6/8/89).
Inspector/Management Planner Refresher Course (full from 3/27/90).
Project Designer (contingent from 5/18/89).
Project Designer (full from 1/10/90).
Project Designer Refresher Course (contingent from 6/8/89).

(45)(a) *Training Provider:* Niagara County Community College.

Address: Corporate Training Center, P.O. Box 70, Lockport, NY 14095, Contact: Eugene Zinni, Phone: (716) 433-1856.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/5/88).
Abatement Worker (full from 1/25/88).
Abatement Worker Refresher Course (contingent from 1/23/89).
Abatement Worker Refresher Course (full from 9/14/90).
Contractor/Supervisor (contingent from 1/5/88).
Contractor/Supervisor (full from 2/19/88).
Contractor/Supervisor Refresher Course (contingent from 2/8/89).
Inspector/Management Planner (contingent from 5/18/88).
Inspector/Management Planner (full from 12/5/88).
Inspector/Management Planner Refresher Course (contingent from 3/6/89).

(46)(a) *Training Provider:* Northeastern Analytical Corporation.

Address: 4 Stow Rd., Marlton, NJ 08053, Contact: Robert Howlitt, Phone: (609) 985-8000.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/17/89).
Abatement Worker Refresher Course (contingent from 8/17/89).
Contractor/Supervisor (contingent from 8/17/89).
Contractor/Supervisor Refresher Course (contingent from 8/17/89).

(47)(a) *Training Provider:* O'Brien & Gere Engineers, Inc.

Address: 5000 Brittonfield Pkwy., P.O. Box 4873, Syracuse, NY 13221, Contact: Michael P. Quirk, Phone: (315) 437-6100.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/19/89).
Abatement Worker (full from 4/10/89).
Abatement Worker Refresher Course (contingent from 9/21/89).
Contractor/Supervisor (contingent from 1/19/89).
Contractor/Supervisor (full from 4/10/89).
Contractor/Supervisor Refresher Course (contingent from 9/21/89).
Inspector/Management Planner (full from 10/27/88).
Inspector/Management Planner Refresher Course (contingent from 2/24/89).
Inspector/Management Planner Refresher Course (full from 1/17/90).

(48)(a) *Training Provider:* Orange/Ulster BOCES Risk Management Dept.

Address: RD 2 Gibson Rd., Goshen, NY 10924, Contact: Arthur J. Lange, Phone: (914) 294-5431.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/18/90).
Contractor/Supervisor (contingent from 3/2/89).
Contractor/Supervisor (full from 5/18/90).

(49)(a) *Training Provider:* P.A. Environmental Corp.

Address: 4240-24F Hutchinson River Pkwy. E., Bronx, NY 10475, Contact: Pichai Arjarasumpun, Phone: (212) 379-6716.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/31/89).
Abatement Worker Refresher Course (contingent from 5/31/89).
Contractor/Supervisor (contingent from 5/31/89).
Contractor/Supervisor Refresher Course (contingent from 5/31/89).

(50)(a) *Training Provider:* Paradigm Environmental Services, Inc.

Address: 961 Lyell Ave., Building 2, Suite 8, Rochester, NY 14606, Contact: Marsha R. Cummings, Phone: (716) 647-2530.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/19/89).
Abatement Worker Refresher Course (contingent from 10/3/89).
Contractor/Supervisor (contingent from 12/28/89).
Contractor/Supervisor Refresher Course (contingent from 10/6/89).

(51)(a) *Training Provider:* Princeton Testing Laboratory, Inc.

Address: 3490 US Route 1, Princeton Service Center, Princeton, NJ 08543, Contact: Charles Schneekloth, Phone: (609) 452-9050.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 3/21/88).

(52)(a) *Training Provider:* Puerto Rico Environmental Consultants and Training Center, Inc.

Address: Cond. Banco Cooperativo Plaza Office, 302-B, Hato Rey, PR 00917, Contact: Roberto Berberena, Phone: (809) 250-6052.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/1/89).
Abatement Worker Refresher Course (contingent from 11/20/89).
Contractor/Supervisor (contingent from 11/1/89).
Contractor/Supervisor Refresher Course (contingent from 11/20/89).
Inspector/Management Planner (contingent from 11/1/89).
Inspector/Management Planner Refresher Course (contingent from 11/20/89).

(53)(a) *Training Provider:* R. J. Fletcher, Inc.

Address: P.O. Box 5021, Utica, NY 13505, Contact: Robert J. Fletcher, Phone: (315) 724-0141.

(b) *Approved Courses:*

Abatement Worker Refresher Course (contingent from 2/24/89).
Inspector/Management Planner Refresher Course (contingent from 2/24/89).

(54)(a) *Training Provider:* SUNY College of Technology at Farmingdale.

Address: Biology Department, Nathan Hale Hall, Farmingdale, NY 11735, Contact: Charles Erlanger, Phone: (516) 420-2000.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 4/24/89).
Inspector/Management Planner (full from 4/27/90).
Inspector/Management Planner Refresher Course (contingent from 4/24/89).

(55)(a) *Training Provider:* Safe Air Environmental Group, Inc.

Address: P.O. Box 1767, Williamsville, NY 14231, Contact: L. J. Beenau or Cronan Long, Phone: (716) 632-0707.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/8/88).
Abatement Worker (full from 4/4/88).
Abatement Worker Refresher Course (contingent from 3/2/89).
Contractor/Supervisor (contingent from 3/8/88).
Contractor/Supervisor (full from 4/4/88).
Contractor/Supervisor Refresher Course (contingent from 3/2/89).

(56)(a) *Training Provider:* Safety Training, Inc.

Address: 114 Durst Pl., Yonkers, NY 10704, Contact: Nelson Helu, Phone: (914) 963-6831.

(b) *Approved Course:*

Abatement Worker (contingent from 4/25/88).

(57)(a) *Training Provider:* State University of New York at Buffalo Toxicology Research Center.

Address: 111 Farber Hall, Buffalo, NY 14214, Contact: Paul J. Kostyniak or J. Syracuse, Phone: (716) 831-2125.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/19/89).
Abatement Worker (full from 6/8/90).
Abatement Worker Refresher Course (contingent from 2/2/89).
Contractor/Supervisor (contingent from 10/19/89).
Contractor/Supervisor (full from 6/8/90).
Contractor/Supervisor Refresher Course (contingent from 2/2/89).
Inspector/Management Planner (contingent from 1/25/89).
Inspector/Management Planner Refresher Course (contingent from 2/2/89).

(58)(a) *Training Provider:* State of New Jersey Dept. of Health.

Address: CN 360, Trenton, NJ 08625-0360, Contact: James A. Brownlee, Phone: (609) 984-2193.

(b) *Approved Course:*

Inspector/Management Planner Refresher Course (contingent from 3/28/89).

(59)(a) *Training Provider:* Testwell Craig Laboratories of Albany, Inc.

Address: 518 Clinton Ave., Albany, NY 12206, Contact: George W. Stowell, Phone: (518) 436-4114.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/15/88).
Abatement Worker (full from 1/24/89).
Abatement Worker Refresher Course (contingent from 10/17/89).
Contractor/Supervisor (contingent from 6/20/89).
Contractor/Supervisor Refresher Course (contingent from 10/15/90).

(60)(a) *Training Provider:* Tri-Cities Laborers Training Program.

Address: 666 Wemple Road, Box 100, Glenmont, NY 12077, Contact: Joseph A. Zappone, Phone: (518) 370-3463.

(b) *Approved Courses:*

Abatement Worker (full from 3/21/88).
Abatement Worker Refresher Course (contingent from 10/26/88).
Abatement Worker Refresher Course (full from 2/2/89).

(61)(a) *Training Provider:* Union Occupational Health Center.

Address: 450 Grider St., Buffalo, NY 14215, Contact: Garath L. Tubbs, Phone: (716) 894-9366.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/31/88).
Contractor/Supervisor (contingent from 10/17/89).

(62)(a) *Training Provider:* Univ. Med. & Dentistry of N.J. Robert Wood Med. School, Mid-Atlantic Asbestos Training Center.

Address: Brookwood II, 45 Knightsbridge Rd., Piscataway, NJ 08854, Contact: Lee Laustsen, Phone: (201) 463-5062.

(b) *Approved Courses:*

Abatement Worker (interim from 7/28/86 to 10/17/89).
Abatement Worker (full from 10/17/89).
Abatement Worker Refresher Course (contingent from 10/17/89).
Contractor/Supervisor (interim from 7/28/86 to 10/17/89).
Contractor/Supervisor (full from 10/17/89).
Contractor/Supervisor Refresher Course (contingent from 10/17/89).
Inspector/Management Planner (full from 11/16/87).
Inspector/Management Planner Refresher Course (full from 11/18/88).
Project Designer (contingent from 11/20/89).
Project Designer Refresher Course (contingent from 10/17/89).

(63)(a) *Training Provider:* Utilicom Corp.

Address: 7 Tobey Village Office Park, Pittsford, NY 14534, Contact: Jackie Aab, Phone: (716) 381-8710.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/20/88).
Abatement Worker (full from 10/31/88).
Abatement Worker Refresher Course (contingent from 4/21/89).

(64)(a) *Training Provider:* Warren Mae Associates.

Address: RD 3, Box 390, Endicott, NY 13760, Contact: Janine C. Rogelstad, Phone: (607) 754-8386.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/11/88).
Abatement Worker (full from 1/4/89).
Abatement Worker Refresher Course (contingent from 3/2/89).
Abatement Worker Refresher Course (full from 3/20/90).

(65)(a) *Training Provider:* Western New York Council on Occupational Safety & Health (WNYCOSH).

Address: 450 Grider St., Buffalo, NY 14215, Contact: Jeanne Reilly, Phone: (716) 897-2110.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/28/87).
Abatement Worker (full from 1/24/88).

(66)(a) *Training Provider:* Wetlands & Environmental Technologies, Inc.

Address: 88 Willow Ave., Hackensack, NJ 07601, Contact: John J. Borris, Phone: (201) 361-4799.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 11/8/89).
Project Designer (contingent from 11/8/89).

(67)(a) *Training Provider:* White Lung Association - NY.

Address: 12 Warren St., 4th Fl., New York, NY 10007, Contact: Daniel Manasia, Phone: (212) 619-2270.

(b) *Approved Course:*

Inspector (contingent from 2/23/89).

(68)(a) *Training Provider:* White Lung Association of New Jersey.

Address: 901 Broad St., Newark, NJ 07102, Contact: Antonio Legorreta, Phone: (201) 824-2623.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/19/89).
Contractor/Supervisor (contingent from 6/19/89).
Inspector/Management Planner (contingent from 9/19/89).
Inspector/Management Planner (full from 5/18/90).

(69)(a) *Training Provider:* Zola Sookias Associates Environmental Consultants.

Address: 545 Eighth Ave., Suite 401, New York, NY 10018, Contact: Zola Sookias, Phone: (212) 330-0914.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/6/89).
Contractor/Supervisor (contingent from 10/6/89).

REGION III -- Philadelphia, PA

Regional Asbestos Coordinator: Carole Dougherty, EPA, Region III (3AM-32), 841 Chestnut Bldg., Philadelphia, PA 19107. (215)597-3160, (FTS) 597-3160.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region III training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* A & S Training School, Inc.
Address: 99 South Cameron St., Harrisburg, PA 17101, Contact: Anna Marie Sossong, Phone: (717) 257-1360.
(b) *Approved Courses:*
Abatement Worker (full from 5/20/85).
Contractor/Supervisor (full from 5/20/85).

(2)(a) *Training Provider:* Advance Analytical Laboratories Inc.
Address: 30th & North Church Sts., Hazleton, PA 18201, Contact: Steven L. Hahn, Phone: (717) 788-4155.
(b) *Approved Courses:*
Abatement Worker (full from 9/8/88).
Abatement Worker Refresher Course (contingent from 12/29/88).
Contractor/Supervisor (contingent from 8/11/88).
Contractor/Supervisor Refresher Course (contingent from 12/29/88).

(3)(a) *Training Provider:* Aerosol Monitoring & Analysis, Inc.
Address: 1341 Ashton Rd., Suite A, Hanover, MD 21076, Contact: Steve Blizzard, Phone: (301) 684-3327.
(b) *Approved Courses:*
Abatement Worker (full from 11/27/87).
Abatement Worker Refresher Course (contingent from 4/20/89).
Abatement Worker Refresher Course (full from 9/1/89).
Contractor/Supervisor (full from 11/27/87).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).
Contractor/Supervisor Refresher Course (full from 9/1/89).
Inspector/Management Planner (contingent from 3/1/88).
Inspector/Management Planner (full from 3/31/88).

(4)(a) *Training Provider:* Alcam, Inc.
Address: 113 Poplar St., Box 213, Ambler, PA 19002, Contact: Albert Camburn, Phone: (215) 367-2791
(b) *Approved Courses:*
Abatement Worker (contingent from 1/26/89).
Contractor/Supervisor (contingent from 1/26/89).

(5)(a) *Training Provider:* Alice Hamilton Center for Occupational Health Center.
Address: 410 7th St., SE., 2nd Fl., Washington, DC 20003, Contact: Brian Christopher, Phone: (202) 543-0005.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/12/87).
Abatement Worker (full from 1/16/88).
Abatement Worker Refresher Course (contingent from 12/29/88).
Abatement Worker Refresher Course (full from 2/22/90).
Contractor/Supervisor (full from 1/16/88).
Contractor/Supervisor Refresher Course (contingent from 12/29/88).
Contractor/Supervisor Refresher Course (full from 2/22/90).
Inspector/Management Planner (contingent from 3/9/88).
Inspector/Management Planner (full from 6/20/88).
Inspector/Management Planner Refresher Course (contingent from 3/2/89).

(6)(a) *Training Provider:* American Asbestos Training Institute, Inc.
Address: 2133 Arch St., Philadelphia, PA 19103, Contact: Linda McNeil, Phone: (215) 988-9710.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/16/89).
Contractor/Supervisor (contingent from 5/16/89).

(7)(a) *Training Provider:* American Monitoring & Engineering Services, Inc.
Address: 200 High Tower Boulevard, Suite 205, Pittsburgh, PA 15205, Contact: David J. Drummond, Phone: (412) 788-8300.
(b) *Approved Course:*
Inspector/Management Planner (contingent from 7/21/89).

(8)(a) *Training Provider:* Apex Environmental, Inc.
Address: 7652 Standish Pl., Rockville, MD 20855, Contact: Dorothy Washlick, Phone: (301) 217-9200.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/27/89).
Contractor/Supervisor (contingent from 7/27/89).

(9)(a) *Training Provider:* Asbestos Abatement Council, AWCI.
Address: 1600 Cameron St., Alexandria, VA 22314-2705, Contact: Gene Fisher, Phone: (703) 684-2924.
(b) *Approved Courses:*
Abatement Worker (full from 6/17/87).
Contractor/Supervisor (full from 6/17/87).

(10)(a) *Training Provider:* Asbestos Analytical Association, Inc.
Address: 3208-B George Washington Hwy., Portsmouth, VA 23704, Contact: Carol A. Holden, Phone: (804) 397-0695.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/7/88).
Contractor/Supervisor (contingent from 10/7/88).

(11)(a) *Training Provider:* Asbestos Environmental Services of Maryland, Inc.
Address: P.O. Box 28, Timonium, MD 21093, Contact: David George, Phone: (301) 584-1490.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/6/89).
Contractor/Supervisor (contingent from 4/6/89).

(12)(a) *Training Provider:* Asbestos Removal Co.
Address: 521 D Pulaski Hwy., Joppa, MD 21085, Contact: Nick Thrappas, Phone: (301) 679-6062.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/11/89).
Contractor/Supervisor (contingent from 12/11/89).

(13)(a) *Training Provider:* Asbestos Training Center.
Address: 628 Spring St., Fairmont, WV 26554, Contact: Theodore Jackson, Phone: (304) 363-3803.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/11/89).
Abatement Worker Refresher Course (contingent from 6/20/90).
Contractor/Supervisor Refresher Course (contingent from 6/20/90).
Inspector Refresher Course (contingent from 6/20/90).

(14)(a) *Training Provider:* Asbestos Workers Local Union No. 24.
Address: 6713 Ammendale Rd., Beltsville, MD 20705, Contact: Thomas Haun, Phone: (301) 937-7636.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/15/88).
Abatement Worker Refresher Course (contingent from 12/1/88).

Contractor/Supervisor (contingent from 12/1/88).
Contractor/Supervisor Refresher Course (contingent from 12/1/88).

(15)(a) *Training Provider:* Associated Thermal Services.
Address: 121 Edgewood Ave., Pittsburgh, PA 15218, Contact: Renee Yuhasz, Phone: (412) 247-4003.

(b) *Approved Courses:*
Abatement Worker (contingent from 12/11/89).
Abatement Worker Refresher Course (contingent from 4/20/90).
Contractor/Supervisor (contingent from 12/11/89).
Contractor/Supervisor Refresher Course (contingent from 4/20/90).
Inspector/Management Planner (contingent from 12/11/89).
Inspector/Management Planner Refresher Course (contingent from 4/20/90).
Project Designer (contingent from 12/11/89).
Project Designer Refresher Course (contingent from 4/20/90).

(16)(a) *Training Provider:* Atlantic Environmental Resources Inc.
Address: 10111-B-Bacon Dr., Beltsville, MD 20705, Contact: John E Kee, Phone: (301) 595-1014.

(b) *Approved Courses:*
Abatement Worker (contingent from 12/11/89).
Contractor/Supervisor (contingent from 12/11/89).

(17)(a) *Training Provider:* BARCO Enterprises, Inc.
Address; 2439 North Charles St., Baltimore, MD 21218, Contact: Bart Harrison, Phone: (301) 889-7770.

(b) *Approved Courses:*
Abatement Worker (contingent from 12/11/89).
Contractor/Supervisor (contingent from 12/11/89).

(18)(a) *Training Provider:* Biospherics, Inc.
Address: 12051 Indian Creek Ct., Beltsville, MD 20705, Contact: Marian Meiselman, Phone: (301) 369-3900.

(b) *Approved Courses:*
Abatement Worker (full from 10/1/87).
Abatement Worker Refresher Course (contingent from 8/12/88).
Abatement Worker Refresher Course (full from 10/31/88).
Contractor/Supervisor (full from 10/1/87).
Contractor/Supervisor Refresher Course (contingent from 8/12/88).
Contractor/Supervisor Refresher Course (full from 10/31/88).
Inspector/Management Planner (contingent from 5/20/88).
Inspector/Management Planner (full from 8/15/88).
Inspector/Management Planner Refresher Course (contingent from 2/23/89).
Inspector/Management Planner Refresher Course (full from 3/20/89).

(19)(a) *Training Provider:* Briggs Associates, Inc.
Address: 8300 Guilford Rd., Suite E, Columbia, MD 21046, Contact: J. Ross Voorhees, Phone: (301) 381-4434.

(b) *Approved Courses:*
Abatement Worker (contingent from 1/30/89).
Abatement Worker (full from 1/11/90).
Abatement Worker Refresher Course (contingent from 1/26/90).
Contractor/Supervisor (full from 1/12/90).

(20)(a) *Training Provider:* Brujos Scientific, Inc.
Address: 505 Drury Ln., Baltimore, MD 21229, Contact: Robert Olcerst, Phone: (301) 566-0859.

(b) *Approved Courses:*
Abatement Worker (full from 11/21/88).
Contractor/Supervisor (contingent from 9/29/88).

(21)(a) *Training Provider:* Business Industrial Safety Supplies.
Address: 118 East Patapsco Ave., Baltimore, MD 21225, Contact: Ronald Mace, Phone: (301) 354-2477.

(b) *Approved Courses:*
Abatement Worker (contingent from 11/20/89).
Contractor/Supervisor (contingent from 11/20/89).

(22)(a) *Training Provider:* Calvert Asbestos Training Services Inc.
Address: P.O. Box 799, Huntingtown, MD 20639, Contact: Carol F. Newhouse, Phone: (301) 535-0960.

(b) *Approved Courses:*
Abatement Worker (contingent from 8/1/90).
Contractor/Supervisor (contingent from 8/1/90).
Inspector/Management Planner (contingent from 8/1/90).
Project Designer (contingent from 8/1/90).

(23)(a) *Training Provider:* Camtech, Inc.
Address: 4550 McKnight Rd., Suite 202, Pittsburgh, PA 15237, Contact: Leslie Connors, Phone: (412) 931-1210.

(b) *Approved Course:*
Inspector/Management Planner (contingent from 10/13/89).

(24)(a) *Training Provider:* Carpenters Joint Apprenticeship Committee of Western Pennsylvania.
Address: 495 Mansfield Ave., Pittsburgh, PA 15205, Contact: William Shehab, Phone: (412) 922-6200.

(b) *Approved Courses:*
Abatement Worker (contingent from 12/1/88).
Abatement Worker (full from 10/6/89).
Abatement Worker Refresher Course (contingent from 10/20/89).
Contractor/Supervisor (contingent from 11/27/89).
Contractor/Supervisor (full from 11/27/89).
Contractor/Supervisor Refresher Course (full from 11/27/89).

(25)(a) *Training Provider:* Center for Environmental & Occupational Training, Inc.
Address: 814 East Pittsburgh Plaza, Pittsburgh, PA 15112, Contact: David Ginsburg, Phone: (412) 823-1002.

(b) *Approved Courses:*
Abatement Worker (contingent from 9/15/88).
Abatement Worker (full from 12/8/88).
Abatement Worker Refresher Course (full from 1/19/89).
Contractor/Supervisor (contingent from 9/15/88).
Contractor/Supervisor (full from 12/8/88).
Contractor/Supervisor Refresher Course (full from 1/19/89).
Inspector/Management Planner (contingent from 3/1/89).
Inspector/Management Planner Refresher Course (contingent from 3/1/89).
Project Designer (contingent from 6/29/89).
Project Designer (full from 12/21/89).
Project Designer Refresher Course (contingent from 12/13/89).

(26)(a) *Training Provider:* Center for Hazardous Materials Research.
Address: University of Pittsburgh Applied, Research Center, 320 William Pitt Way, Pittsburgh, PA 15238, Contact: Steven T. Ostheim, Phone: (412) 826-5320.

(b) *Approved Courses:*
Abatement Worker (contingent from 11/28/88).
Contractor/Supervisor (contingent from 11/28/88).

(27)(a) *Training Provider:* Charles County Community College.
Address: Mitchell Rd., Box S10, LaPlata, MD 20646-0910, Contact: Jake Bair, Phone: (301) 934-2251.

(b) *Approved Courses:*
Abatement Worker (contingent from 1/26/89).
Abatement Worker Refresher Course (contingent from 4/20/89).

Contractor/Supervisor (contingent from 1/26/89).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).

(28)(a) *Training Provider:* Delaware Technical & Community College, Terry Campus/Stanton Campus.
Address: 1798 North DuPont Pkwy., P.O. Box 897, Dover, DE 19903, Contact: David Stanley, Phone: (302) 454-3900.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/20/88).
Abatement Worker Refresher Course (contingent from 3/1/88).
Contractor/Supervisor (contingent from 4/20/88).
Contractor/Supervisor Refresher Course (contingent from 3/1/88).

(29)(a) *Training Provider:* Drexel University, Office of Continuing Professional Education.
Address: 32nd & Chestnut Sts., Philadelphia, PA 19104, Contact: Robert Ross, Phone: (215) 895-2156.

(b) *Approved Courses:*

Abatement Worker (interim from 9/1/86 to 11/11/87).
Abatement Worker (full from 11/12/87).
Abatement Worker Refresher Course (contingent from 12/29/88).
Contractor/Supervisor (interim from 9/1/86 to 11/11/87).
Contractor/Supervisor (full from 11/12/87).
Contractor/Supervisor Refresher Course (contingent from 12/29/88).
Inspector/Management Planner (contingent from 3/8/88).
Inspector/Management Planner (full from 3/14/88).
Inspector/Management Planner Refresher Course (contingent from 12/29/88).
Inspector/Management Planner Refresher Course (full from 1/19/90).
Project Designer (contingent from 11/27/89).

(30)(a) *Training Provider:* Dynamac Corp.
Address: 11140 Rockville Pike, Rockville, MD 20852, Contact: Richard A. De Blasio, Phone: (301) 468-2500.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/6/89).
Contractor/Supervisor (contingent from 3/2/89).
Inspector/Management Planner (contingent from 9/1/88).
Inspector/Management Planner Refresher Course (contingent from 6/26/89).

(31)(a) *Training Provider:* E.I. DuPont De Nemours & Co. Spruance Plant.
Address: P.O. Box 27001, Richmond, VA 23261, Contact: Clarence P. Mihal, Jr., Phone: (804) 743-2948.

(b) *Approved Course:*

Abatement Worker (contingent from 11/14/88).

(32)(a) *Training Provider:* Eagle Industrial Hygiene Association Inc.
Address: 359 Dresher Rd., Horsham, PA 19044, Contact: Stephen R. Bell, Phone: (215) 657-2261.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/6/89).
Abatement Worker (full from 7/14/89).
Abatement Worker Refresher Course (contingent from 10/30/89).
Contractor/Supervisor (contingent from 4/6/89).
Contractor/Supervisor (full from 7/14/89).
Contractor/Supervisor Refresher Course (contingent from 10/30/89).
Inspector/Management Planner (contingent from 5/16/89).
Inspector/Management Planner Refresher Course (contingent from 7/20/89).
Project Designer (contingent from 12/11/89).

(33)(a) *Training Provider:* Environmental Education Associates.
Address: 28 West Main St., Plymouth, PA 18651, Contact: Harry H. West, Phone: (717) 779-4242.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/17/89).
Contractor/Supervisor (contingent from 5/17/89).
Inspector (contingent from 5/17/89).

(34)(a) *Training Provider:* Environmental Training & Consultants, Inc.
Address: 2 Bala Plaza, Suite 300, Bala Cynwyd, PA 19004, Contact: Linda L. Kershaw, Phone: (215) 667-4685.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/6/89).
Abatement Worker Refresher Course (contingent from 1/13/90).
Contractor/Supervisor (contingent from 4/6/89).
Contractor/Supervisor Refresher Course (contingent from 1/13/90).
Inspector/Management Planner (contingent from 4/6/89).
Inspector/Management Planner Refresher Course (contingent from 1/13/90).

(35)(a) *Training Provider:* Environmental Training, Inc.
Address: 10 Industrial Hwy., Building N, Tinicum Industrial Park, Philadelphia, PA 19113, Contact: Gary D. Hyrne, Phone: (215) 521-5469.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/1/89).
Abatement Worker Refresher Course (contingent from 6/29/89).
Contractor/Supervisor (contingent from 3/1/89).
Contractor/Supervisor Refresher Course (contingent from 6/29/89).

(36)(a) *Training Provider:* Facilities Management Consultants, Inc.
Address: P.O. Box 309, Cecil, PA 15321, Contact: Edward Monaco, Phone: (412) 745-1770.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/30/88).
Abatement Worker (full from 10/18/88).
Abatement Worker Refresher Course (contingent from 7/21/89).
Abatement Worker Refresher Course (full from 10/5/89).
Contractor/Supervisor (full from 10/18/88).
Contractor/Supervisor Refresher Course (contingent from 7/21/89).
Contractor/Supervisor Refresher Course (full from 10/5/89).

(37)(a) *Training Provider:* GA Environmental Services, Inc.
Address: Pier 5 Penn's Landing, Philadelphia, PA 19106, Contact: Frank E. Cona, Phone: (215) 351-4045.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/17/89).
Abatement Worker Refresher Course (contingent from 12/13/89).
Contractor/Supervisor (contingent from 8/17/89).
Contractor/Supervisor Refresher Course (contingent from 12/13/89).
Inspector/Management Planner (contingent from 11/7/89).
Inspector/Management Planner Refresher Course (contingent from 11/7/89).
Project Designer (contingent from 8/17/89).
Project Designer Refresher Course (contingent from 12/13/89).

(38)(a) *Training Provider:* GST Co.
Address: 50 Progress Ave., Zelienople, PA 16063, Contact: Norma Stanford, Phone: (412) 772-7488.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/14/88).
Abatement Worker (full from 12/5/88).
Abatement Worker Refresher Course (contingent from 1/30/89).
Contractor/Supervisor (contingent from 11/14/88).

Contractor/Supervisor (full from 12/5/88).
Contractor/Supervisor Refresher Course (contingent from 1/30/89).
Inspector/Management Planner (contingent from 12/29/88).
Inspector/Management Planner Refresher Course (contingent from 12/12/89).

(39)(a) *Training Provider:* Galson Technical Services, Inc.

Address: 5170 Campus Dr., Suite 200, Plymouth Meeting, PA 19462, Contact: Ernest L. Sweet, Phone: (215) 432-0506.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 6/17/88).

(40)(a) *Training Provider:* General Physics Corp.

Address: 6700 Alexander Bell Dr., Columbia, MD 21046, Contact: Andrew K. Marsh, Phone: (301) 290-2300.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/6/89).
Contractor/Supervisor (contingent from 4/6/89).

(41)(a) *Training Provider:* Genty Associates.

Address: 6080 Woodland Ave., Philadelphia, PA 19143, Contact: Frank Genty, Phone: (215) 727-4420.

(b) *Approved Course:*

Abatement Worker (contingent from 9/14/89).

(42)(a) *Training Provider:* Gerald T. Fenton, Inc.

Address: 3152 Bladensburg Rd., Washington, DC 20018, Contact: James R. Foster, Phone: (202) 269-2112.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/15/88).
Contractor/Supervisor (contingent from 12/15/88).

(43)(a) *Training Provider:* Hazard Abatement Training Center.

Address: 101 East Lancaster Ave., Wayne, PA 19087, Contact: Robert Mautner, Phone: (215) 971-0830.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 4/12/88).

(44)(a) *Training Provider:* Hazardous Materials Management.

Address: 932 West Patipso Ave., Baltimore, MD 21230, Contact: Anthony Bizzari, Phone: (301) 355-6586.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/11/89).
Contractor/Supervisor (contingent from 12/11/89).

(45)(a) *Training Provider:* Heat & Frost Insulators & Asbestos Workers Local Union No. 2.

Address: P.O. Box 595, Moon-Clinton Rd., Clinton, PA 15026, Contact: Terry Larkin, Phone: (412) 695-2883.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/28/88).
Abatement Worker (full from 10/27/88).
Abatement Worker Refresher Course (contingent from 9/28/88).
Abatement Worker Refresher Course (full from 12/8/88).
Contractor/Supervisor (contingent from 9/28/88).
Contractor/Supervisor (full from 8/28/89).
Contractor/Supervisor Refresher Course (contingent from 9/28/88).
Contractor/Supervisor Refresher Course (full from 8/3/89).

(46)(a) *Training Provider:* Heat & Frost Insulators & Asbestos Workers Local Union No. 23.

Address: 42 Lynwood Dr., Rd. 4, Allentown, PA 18103, Contact: Jos Klocek, Phone: (717) 564-7563.

(b) *Approved Course:*

Abatement Worker (contingent from 10/20/88).

(47)(a) *Training Provider:* Ind. Tra. Co. Ltd.

Address: 18 South 22nd St., Richmond, VA 23223-7024, Contact: Vera Barley, Phone: (804) 648-7836.

(b) *Approved Courses:*

Abatement Worker (full from 9/15/87).
Abatement Worker Refresher Course (contingent from 8/12/88).
Contractor/Supervisor (full from 9/15/87).
Inspector/Management Planner (full from 9/16/88).
Inspector/Management Planner Refresher Course (full from 3/1/89).

(48)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 38.

Address: 315 - 317 North Washington St., Wilkes-Barre, PA 18703, Contact: Robert Hughes, Phone: (717) 829-0634.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 3/20/90).
Abatement Worker Refresher Course (contingent from 6/6/90).

(49)(a) *Training Provider:* JMR Associates.

Address: P.O. Box 9895, Philadelphia, PA 19140, Contact: Joseph Faulk, III, Phone: (215) 227-3035.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/24/89).
Abatement Worker (full from 9/15/89).
Contractor/Supervisor (contingent from 8/24/89).
Contractor/Supervisor (full from 9/15/89).

(50)(a) *Training Provider:* Jenkins Professionals, Inc.

Address: 5022 Campbell Blvd., Suite F, Baltimore, MD 21236, Contact: Larry Jenkins, Phone: (301) 529-3553.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/10/88).
Abatement Worker Refresher Course (contingent from 3/2/89).
Contractor/Supervisor (contingent from 2/10/88).
Contractor/Supervisor Refresher Course (contingent from 3/2/89).
Inspector/Management Planner (contingent from 11/1/89).

(51)(a) *Training Provider:* John H. Lange Associates.

Address: 4623 Northridge Dr., Pittsburgh, PA 15235-3510, Contact: John H. Lange, Phone: (412) 733-1448.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/9/90).
Abatement Worker Refresher Course (contingent from 10/15/89).
Contractor/Supervisor (contingent from 7/9/90).
Contractor/Supervisor Refresher Course (contingent from 10/15/89).
Inspector/Management Planner (contingent from 7/9/90).
Inspector/Management Planner Refresher Course (contingent from 10/15/89).
Project Designer (contingent from 7/9/90).
Project Designer Refresher Course (contingent from 10/15/89).

(52)(a) *Training Provider:* Laborers District Council Training Fund of Baltimore & Vicinity.

Address: 7400 Buttercup Rd., Sykesville, MD 21784, Contact: Robert Williams, Phone: (301) 549-1800.

(b) *Approved Course:*

Abatement Worker (contingent from 4/10/89).

(53)(a) *Training Provider:* Laborers District Council of Eastern Pennsylvania.

Address: 2163 Berryhill St., Harrisburg, PA 17104, Contact: Gerald D. Temarantz, Phone: (717) 564-2707.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/17/88).
Abatement Worker (full from 1/30/89).

Abatement Worker Refresher Course (contingent from 8/17/89).
Abatement Worker Refresher Course (full from 3/20/90).

(54)(a) *Training Provider:* Laborers District Council of Western Pennsylvania.

Address: 1101 Fifth Ave., Pittsburgh, PA 15219, Contact: Robert F. Ferrari, Phone: (412) 391-8533.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/17/88).
Abatement Worker (full from 10/31/88).
Abatement Worker Refresher Course (contingent from 3/2/89).
Contractor/Supervisor (contingent from 6/17/88).
Contractor/Supervisor (full from 10/31/88).
Contractor/Supervisor Refresher Course (contingent from 8/17/89).

(55)(a) *Training Provider:* Laborers District Council, Education Training Fund of Philadelphia & Vicinity.

Address: 500 Lancaster Ave., Exton, PA 19341, Contact: Jerry Roseman, Phone: (215) 836-1175.

(b) *Approved Courses:*

Abatement Worker (interim from 11/1/87 to 12/14/87).
Abatement Worker (contingent from 2/18/88).
Contractor/Supervisor (contingent from 4/30/89).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).

(56)(a) *Training Provider:* Marcus Environmental.

Address: 6345 Courthouse Rd., P.O. Box 227, Prince George, VA 23875, Contact: Susan M. Wilcox, Phone: (804) 733-1855.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/26/89).
Contractor/Supervisor (contingent from 1/26/89).

(57)(a) *Training Provider:* Maryland Department of the Environment.

Address: 2500 Broening Hwy., Baltimore, MD 21224, Contact: Barbara Conrad, Phone: (301) 631-3847.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/16/89).
Contractor/Supervisor (contingent from 11/16/89).
Inspector/Management Planner (contingent from 4/14/89).

(58)(a) *Training Provider:* Maryland Industrial Safety Training Services.

Address: 668 Shore Dr., Joppa, MD 21085, Contact: Brain Stewart, Phone: (301) 679-9362.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/11/89).
Contractor/Supervisor (contingent from 12/11/89).

(59)(a) *Training Provider:* Medical College of Virginia, Virginia Commonwealth University Dept. of Preventive Medicine.

Address: P.O. Box 212, Richmond, VA 23298, Contact: Leonard Vance, Phone: (804) 786-9785.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 10/2/87).
Contractor/Supervisor (full from 11/2/87).
Contractor/Supervisor Refresher Course (contingent from 8/12/88).
Inspector/Management Planner (full from 2/29/88).
Inspector/Management Planner Refresher Course (contingent from 12/29/88).

(60)(a) *Training Provider:* National Association of Minority Contractors.

Address: 806 15th St., NW., Washington, DC 20012, Contact: Ralph C. Thomas, III, Phone: (202) 347-8259.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/19/89).
Contractor/Supervisor (contingent from 4/19/89).

(61)(a) *Training Provider:* National Training Fund for the Sheet Metal and Air Conditioning Industry.

Address: 601 North Fairfax St., Suite 240, Alexandria, VA 22314, Contact: Gerald Olejniczak, Phone: (703) 739-7200.

(b) *Approved Courses:*

Abatement Worker (interim from 11/1/86 to 8/1/87).
Abatement Worker (contingent from 9/18/87).
Abatement Worker (full from 9/18/87).
Abatement Worker Refresher Course (contingent from 12/29/88).
Contractor/Supervisor (interim from 11/1/86 to 8/1/87).
Contractor/Supervisor (contingent from 9/18/87).
Contractor/Supervisor (full from 9/18/87).
Contractor/Supervisor Refresher Course (contingent from 5/18/89).
Inspector (contingent from 5/26/88).

(62)(a) *Training Provider:* Occupational Medical Center.

Address: 4451 Parliament Pl., Lanham, MD 20706, Contact: Ellen Kite, Phone: (301) 306-0632.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/28/88).
Abatement Worker Refresher Course (contingent from 12/13/89).
Contractor/Supervisor (contingent from 9/25/89).
Contractor/Supervisor Refresher Course (contingent from 12/13/89).

(63)(a) *Training Provider:* Old Dominion University, Office of Continuing Education, College of Health Services.

Address: 204 Old Science Building, Norfolk, VA 23529-0290, Contact: Shirley Glover, Phone: (804) 440-4256.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/30/88).
Abatement Worker (full from 7/27/88).

(64)(a) *Training Provider:* Oneil M. Banks, Inc.

Address: 336 South Main St., Bel Air, MD 21014, Contact: Oneil M. Banks, Phone: (301) 879-4676.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/5/88).
Abatement Worker (full from 2/20/89).
Abatement Worker Refresher Course (contingent from 10/12/89).
Contractor/Supervisor (contingent from 1/5/88).
Contractor/Supervisor Refresher Course (contingent from 10/12/89).
Inspector (contingent from 3/14/88).

(65)(a) *Training Provider:* Paskal Environmental Services.

Address: 6010 Sonoma Rd., Bethesda, MD 20817, Contact: Steve Paskal, Phone: (301) 571-1507.

(b) *Approved Course:*

Abatement Worker (contingent from 4/28/88).

(66)(a) *Training Provider:* Pennsylvania Dept. of Welfare.

Address: Capitol Associates Bldg., Room 103, P.O. Box 2675, Harrisburg, PA 17105, Contact: Gerald A. Donatucci, Phone: (717) 783-9543.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/3/88).
Abatement Worker (full from 11/15/88).
Abatement Worker Refresher Course (contingent from 8/17/89).
Abatement Worker Refresher Course (full from 12/14/89).

(67)(a) *Training Provider:* Philadelphia Electric Co.

Address: Barbados Training Center, Norristown, PA 19401, Contact: John J. Stankiewiez, Phone: (215) 270-8600.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/19/88).
Abatement Worker (full from 7/28/89).

Abatement Worker Refresher Course (contingent from 2/24/89).
Abatement Worker Refresher Course (full from 11/15/89).

(68)(a) *Training Provider:* Phoenix Safety Associates, Ltd.

Address: P.O. Box 545, Phoenixville, PA 19460, Contact: Janice Sharkey, Phone: (215) 935-1770.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 9/1/88).

(69)(a) *Training Provider:* Quality Specialities, Inc.

Address: P.O. Box 46, 109 South 15th Ave., Hopewell, VA 23860, Contact: Lewis Stevenson, Phone: (804) 458-5655.

(b) *Approved Course:*

Abatement Worker (contingent from 8/8/88).

(70)(a) *Training Provider:* RCW Environmental Consulting & Training.

Address: 711 Shetland St., Rockville, MD 20851, Contact: Robert C. Wyatt, Phone: (301) 251-0291.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/1/89).
Contractor/Supervisor (contingent from 8/1/89).
Inspector/Management Planner (contingent from 11/1/89).

(71)(a) *Training Provider:* Roofer Local No. 30/Roofing & Sheet Metal Contractors of Philadelphia & Vicinity Joint Apprentice Program.

Address: 433 Kelly Dr., Philadelphia, PA 19129, Contact: Richard Harvey, Phone: (215) 849-4800.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/21/89).
Contractor/Supervisor (contingent from 7/21/89).

(72)(a) *Training Provider:* S.G. Brown, Inc.

Address: 2701 Sonic Dr., Virginia Beach, VA 23456, Contact: Sandra A. Akers, Phone: (804) 468-0027.

(b) *Approved Course:*

Abatement Worker (contingent from 7/12/88).

(73)(a) *Training Provider:* SE Technologies., Inc. (SET).

Address: 98 Vanadium Rd., Bridgeville, PA 15017, Contact: Amy Couch Shultz, Phone: (412) 221-1100.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/22/89).
Abatement Worker Refresher Course (contingent from 4/20/89).
Contractor/Supervisor (contingent from 2/22/89).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).
Inspector/Management Planner (contingent from 2/22/89).
Inspector/Management Planner Refresher Course (contingent from 4/20/89).

(74)(a) *Training Provider:* STI, Inc.

Address: P.O. Box 1029, Aberdeen, MD 21001, Contact: Terry F. Carraway, Jr., Phone: (301) 575-7844.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/19/88).
Abatement Worker Refresher Course (contingent from 12/29/88).
Contractor/Supervisor (contingent from 7/19/88).
Contractor/Supervisor Refresher Course (contingent from 12/29/88).
Inspector/Management Planner (contingent from 12/15/88).
Inspector/Management Planner Refresher Course (contingent from 10/30/89).

(75)(a) *Training Provider:* STIC Corporation.

Address: Box 347, Wilkes-Barre, PA 18703, Contact: Ed Barrett, Phone: (717) 829-3614.

(b) *Approved Course:*

Contractor/Supervisor (contingent from 4/7/89).

(76)(a) *Training Provider:* Safety Management Institute.

Address: P.O. Box 1844, Altoona, PA 16603, Contact: Christopher Tate, Phone: (814) 946-1221.

(b) *Approved Courses:*

Abatement Worker (**Approval Suspended 10/2/89**).
Abatement Worker Refresher Course (**Approval Suspended 10/2/89**).
Contractor/Supervisor (**Approval Suspended 10/2/89**).
Contractor/Supervisor Refresher Course (**Approval Suspended 10/2/89**).
Inspector/Management Planner (**Approval Suspended 10/2/89**).
Inspector/Management Planner Refresher Course (**Approval Suspended 10/2/89**).

(77)(a) *Training Provider:* Temple University College of Engineering Asbestos Abatement Center.

Address: 12th & Norris Sts., Philadelphia, PA 19122, Contact: Lester Levin, Phone: (215) 787-6479.

(b) *Approved Courses:*

Abatement Worker (full from 10/21/87).
Contractor/Supervisor (contingent from 9/28/87).
Contractor/Supervisor (full from 10/1/87).
Inspector/Management Planner (full from 10/13/87).
Inspector/Management Planner Refresher Course (full from 12/19/88).
Project Designer (contingent from 3/20/89).

(78)(a) *Training Provider:* Tetra Services, Inc.

Address: Pleasant Valley Rd., P.O. Box 295A, Trafford, PA 15085, Contact: Dominic R. Medure, Phone: (412) 744-3377.

(b) *Approved Course:*

Abatement Worker (contingent from 4/20/89).

(79)(a) *Training Provider:* The Glaser Co.

Address: 200 Kanawha Ter., St. Albans, WV 25177, Contact: Stephen P. Glaser, Phone: (304) 722-2832.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/6/89).
Contractor/Supervisor (contingent from 4/6/89).

(80)(a) *Training Provider:* The J.O.B.S. Company.

Address: P.O. Box 3763, Charleston, WV 25337, Contact: Ann Hyre, Phone: (304) 344-0048.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/28/89).
Abatement Worker (full from 2/14/90).
Contractor/Supervisor (contingent from 5/25/89).

(81)(a) *Training Provider:* Tracor Jitco, Inc.

Address: 1601 Research Blvd., Rockville, MD 20850, Contact: Daniel O. Chute, Phone: (301) 984-2718.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/4/89).
Contractor/Supervisor (contingent from 1/4/89).
Inspector/Management Planner (contingent from 1/4/89).

(82)(a) *Training Provider:* United Brotherhood of Carpenters & Joiners of America.

Address: 101 Constitution Ave. NW., Washington, DC 20001, Contact: Joseph L Durst, Jr., Phone: (202) 546-6206.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/11/89).
Abatement Worker Refresher Course (contingent from 3/21/90).
Contractor/Supervisor (contingent from 12/11/89).
Contractor/Supervisor Refresher Course (contingent from 3/21/90).

(83)(a) *Training Provider:* United Environmental Systems, Inc.

Address: 104-106 Arch St., Philadelphia, PA 19106, Contact: Holly Tate, Phone: (215) 829-9454.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/3/88).
Abatement Worker (full from 9/25/89).
Abatement Worker Refresher Course (contingent from 1/30/90).
Contractor/Supervisor (contingent from 6/30/86).
Inspector/Management Planner (contingent from 7/8/88).

(84)(a) *Training Provider:* University of Pittsburgh, Graduate School of Public Health.

Address: Dept. of Industrial Environmental, Health Sciences, Pittsburgh, PA 15261, Contact: Dietrich A. Weyel, Phone: (412) 624-3042.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/6/88).
Abatement Worker (full from 6/6/88).
Abatement Worker Refresher Course (contingent from 4/20/89).
Contractor/Supervisor (contingent from 3/6/88).
Contractor/Supervisor (full from 6/6/88).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).

(85)(a) *Training Provider:* University of Scranton Technology Center.

Address: Scranton, PA 18510-2192, Contact: Jerome P. De Santo, Phone: (717) 961-4050.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 6/26/89).

(86)(a) *Training Provider:* Volz Environmental Services, Inc.

Address: 3010 William Pitt Way, Pittsburgh, PA 15238, Contact: Greg Ashman, Phone: (412) 826-3150.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/3/88).
Abatement Worker (full from 1/23/89).
Abatement Worker Refresher Course (contingent from 4/20/89).
Abatement Worker Refresher Course (full from 11/21/89).
Contractor/Supervisor (contingent from 10/3/88).
Contractor/Supervisor (full from 1/23/89).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).
Contractor/Supervisor Refresher Course (full from 11/21/89).
Inspector/Management Planner (contingent from 10/3/88).
Inspector/Management Planner (full from 1/29/90).
Inspector/Management Planner Refresher Course (contingent from 4/20/89).
Inspector/Management Planner Refresher Course (full from 12/18/89).
Project Designer (contingent from 9/1/89).
Project Designer (full from 12/8/89).
Project Designer Refresher Course (contingent from 12/13/89).

(87)(a) *Training Provider:* W.S. Keyes Associates.

Address: 55 Frazer Rd., Bech 232, Malvern, PA 19355, Contact: W. Scot Keyes, Phone: (215) 647-2878.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/25/90).
Contractor/Supervisor (contingent from 1/25/90).
Inspector/Management Planner (contingent from 1/25/90).

(88)(a) *Training Provider:* Waco, Inc.

Address: Highway 925, N., P.O. Box 740, White Plains, MD 20695, Contact: Wayne Cooper, Phone: (301) 843-2488.

(b) *Approved Courses:*

Abatement Worker (full from 9/15/87).
Abatement Worker Refresher Course (contingent from 8/12/88).
Contractor/Supervisor (full from 9/15/87).
Contractor/Supervisor Refresher Course (contingent from 3/1/89).
Inspector/Management Planner Refresher Course (contingent from 3/11/88).

(89)(a) *Training Provider:* West Virginia Laborers Training Trust Fund.

Address: One Monogalia St., Charleston, WV 25302, Contact: Wetzel Harvey, Phone: (304) 346-0581.

(b) *Approved Course:*

Abatement Worker (contingent from 8/29/88).

(90)(a) *Training Provider:* West Virginia University Extension Service.

Address: 704 Knapp Hall, P.O. Box 6031, Morgantown, WV 26506-6031, Contact: Robert L. Moore, Phone: (304) 293-4013.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/20/88).
Abatement Worker Refresher Course (contingent from 11/2/89).
Contractor/Supervisor (contingent from 10/20/88).
Contractor/Supervisor Refresher Course (contingent from 11/2/89).
Inspector/Management Planner (contingent from 5/9/88).
Inspector/Management Planner Refresher Course (contingent from 4/20/89).
Inspector/Management Planner Refresher Course (full from 4/26/89).

(91)(a) *Training Provider:* White Lung Association.

Address: 1601 St. Paul St., Baltimore, MD 21201, Contact: James Fite, Phone: (301) 727-6029.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/18/88).
Abatement Worker (full from 6/6/88).
Abatement Worker Refresher Course (contingent from 2/23/89).
Contractor/Supervisor (contingent from 2/18/88).
Contractor/Supervisor (full from 6/6/88).
Contractor/Supervisor Refresher Course (contingent from 2/23/89).
Inspector/Management Planner (contingent from 1/4/88).
Inspector/Management Planner (full from 2/15/88).
Inspector/Management Planner Refresher Course (contingent from 12/29/88).

(92)(a) *Training Provider:* William L. James Enterprises, Inc.

Address: P.O. Box 1478, Scranton, PA 18501-1478, Contact: William L. James, Phone: (717) 344-5830.

(b) *Approved Courses:*

Abatement Worker Refresher Course (contingent from 11/7/89).
Contractor/Supervisor (contingent from 4/20/88).
Contractor/Supervisor Refresher Course (contingent from 11/7/87).

REGION IV -- Atlanta, GA

Regional Asbestos Coordinator: Larinda Gronner, EPA, Region IV, 345 Courtland St., NE., Atlanta, GA 30365. (404) 347-5014, (FTS) 257-5014.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certificatin indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region IV training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* A.S.C. Consultants, Inc.

Address: P.O. Box 31, Waynesville, NC 28786, Contact: Terry LaDuke, Phone: (704) 452-3449.

(b) *Approved Course:*

Abatement Worker (contingent from 6/22/89).

(2)(a) *Training Provider:* AHP Research, Inc.

Address: 1505 Johnson's Ferry Rd., Marietta, GA 30062, Contact: Dwight Brown, Phone: (404) 565-0061.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/3/89).
Contractor/Supervisor (contingent from 11/13/89).
Contractor/Supervisor Refresher Course (contingent from 1/6/89).
Inspector/Management Planner (interim from 5/28/86 to 12/13/87).
Inspector/Management Planner (full from 12/14/87).

(3)(a) *Training Provider:* ARI Institute.

Address: P.O. Box 60599, Nashville, TN 37206, Contact: Mike Carver, Phone: (615) 228-3820.

(b) *Approved Course:*

Abatement Worker (contingent from 12/6/89).

(4)(a) *Training Provider:* ASC Asbestos Training Center.

Address: P.O. Box 291569, Nashville, TN 37229-1569, Contact: Don Hoffman, Phone: (615) 399-2221.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/4/90).
Abatement Worker Refresher Course (contingent from 2/4/90).
Contractor/Supervisor (contingent from 2/4/90).
Inspector/Management Planner (contingent from 2/5/90).
Inspector/Management Planner Refresher Course (contingent from 2/5/90).
Project Designer (contingent from 2/5/90).

(5)(a) *Training Provider:* ATEC Associates, Inc.

Address: 129 West Valley Ave., Birmingham, AL 35209-3691, Contact: W. David Yates, Phone: (205) 945-9224.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/14/89).
Contractor/Supervisor (contingent from 4/14/89).
Inspector/Management Planner (contingent from 4/14/89).

(6)(a) *Training Provider:* ATI Environmental Services.

Address: P.O. Box 3044, Louisville, KY 40201, Contact: Tim Ellis, Phone: (502) 589-5308.

(b) *Approved Courses:*

Abatement Worker (full from 1/12/88).
Abatement Worker Refresher Course (contingent from 2/21/89).
Contractor/Supervisor (full from 1/12/88).
Contractor/Supervisor Refresher Course (contingent from 2/21/89).

(7)(a) *Training Provider:* All Gulf Contractors, Inc.

Address: 3654 Halls Mill Rd., Mobile, AL 36693, Contact: Robert Pettie, Phone: (205) 665-5199.

(b) *Approved Course:*

Abatement Worker (contingent from 2/22/89).

(8)(a) *Training Provider:* American Environmental Safety Institute.

Address: P.O. Box 212116, Columbia, SC 29221-2116, Contact: Kim Cleveland, Phone: (803) 771-7463.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/29/89).
Abatement Worker (full from 6/1/90).
Abatement Worker Refresher Course (contingent from 12/16/88).
Abatement Worker Refresher Course (full from 6/12/90).
Contractor/Supervisor (full from 10/17/88).
Contractor/Supervisor Refresher Course (contingent from 12/16/88).
Contractor/Supervisor Refresher Course (full from 6/13/90).
Inspector/Management Planner (full from 2/8/89).

(9)(a) *Training Provider:* Asbestos Abatement Associates, Inc.

Address: P.O. Box 8178, Spartanburg, SC 29305, Contact: John McNamara, Phone: (803) 582-1222.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/17/89).
Abatement Worker (full from 6/26/89).
Abatement Worker Refresher Course (contingent from 5/1/89).
Abatement Worker Refresher Course (full from 7/19/89).
Contractor/Supervisor (contingent from 3/7/89).
Contractor/Supervisor (full from 7/19/89).
Contractor/Supervisor Refresher Course (contingent from 5/1/89).
Contractor/Supervisor Refresher Course (full from 7/19/89).
Inspector/Management Planner Refresher Course (contingent from 5/1/89).
Inspector/Management Planner Refresher Course (full from 7/31/89).
Project Designer (contingent from 11/14/89).
Project Designer (full from 1/12/90).
Project Designer Refresher Course (contingent from 10/18/89).
Project Designer Refresher Course (full from 11/21/89).

(10)(a) *Training Provider:* Asbestos Consultants, Inc.

Address: P.O. Box 9054, Greensboro, NC 27408, Contact: Thomas Petty, Phone: (919) 275-3907.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 3/9/88).

(11)(a) *Training Provider:* Asbestos Disease Association.

Address: 800 West Platt St., Tampa, FL 33706, Contact: John D. Householter, Phone: (813) 254-0003.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 12/11/89).
Inspector/Management Planner (contingent from 12/11/89).

(12)(a) *Training Provider:* Asbestos Technical Resource Center, Inc.

Address: P.O. Box 2755, Covington, GA 30209-2755, Contact: Timothy E. Fuller, Phone: (404) 361-9182.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/2/89).
Abatement Worker Refresher Course (full from 6/7/89).
Contractor/Supervisor (contingent from 6/2/89).
Contractor/Supervisor (full from 8/10/89).
Contractor/Supervisor Refresher Course (full from 6/7/89).

(13)(a) *Training Provider:* Atlantic Environmental Consulting, Inc.

Address: 12200 Southwest 132 Ct., Miami, FL 33186, Contact: Stephan R. Schanamann, Phone: (305) 232-6364.

(b) *Approved Course:*

Abatement Worker (contingent from 8/11/88).

(14)(a) *Training Provider:* BCM Engineers, Inc.

Address: 104 St. Anthony St., P.O. Box 1784, Mobile, AL 36633, Contact: Conrad Freeman, Phone: (205) 433-3981.

(b) *Approved Courses:*

Inspector/Management Planner (full from 11/11/87).
Inspector/Management Planner Refresher Course (contingent from 11/10/88).
Inspector/Management Planner Refresher Course (full from 10/16/90).
Project Designer (full from 12/8/87).
Project Designer Refresher Course (contingent from 5/4/89).
Project Designer Refresher Course (full from 10/17/90).

(15)(a) *Training Provider:* Betchel Construction, Inc.

Address: P.O. Box 3218, Florida City, FL 33034, Contact: R.C. Slover, Phone: (305) 246-6565.

(b) *Approved Course:*

Abatement Worker (contingent from 3/13/89).

(16)(a) *Training Provider:* Big Bend Abatement, Inc.

Address: 3542 West Orange Ave., Tallahassee, FL 32310, Contact: Robert Law, Phone: (904) 576-0130.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/28/89).

Abatement Worker (full from 9/26/90).

(17)(a) *Training Provider:* Briggs Associates Int'l. Inc.

Address: 4209 Vineland Rd., Suites J-9/10, Orlando, FL 32811, Contact: Jim McCulloch, Phone: (407) 422-3522.

(b) *Approved Course:*

Abatement Worker (contingent from 5/4/89).

(18)(a) *Training Provider:* CRU Incorporated.

Address: 13029 Middletown Industrial Blvd., Louisville, KY 40223, Contact: Donna Ringo, Phone: (502) 244-8844.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/1/89).

Contractor/Supervisor (contingent from 5/1/89).

Contractor/Supervisor Refresher Course (contingent from 9/1/89).

Inspector/Management Planner (contingent from 5/26/89).

(19)(a) *Training Provider:* Chemalytics.

Address: 33 East 7th St., Covington, KY 41011, Contact: Kenneth Reed, Phone: (606) 431-6224.

(b) *Approved Course:*

Abatement Worker (contingent from 1/17/90).

(20)(a) *Training Provider:* DPC General Contractors, Inc.

Address: 250 Arizona Ave., NE., Bldg. A, Atlanta, GA 30307, Contact: Glen Kahler, Phone: (404) 373-0561.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/5/88).

Abatement Worker (full from 5/9/88).

(21)(a) *Training Provider:* Diversified Industries, Inc.

Address: P.O. Box 10452, 7316 Market St., Wilmington, NC 28405, Contact: Greg Hale, Phone: (919) 686-1736.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/23/90).

Abatement Worker Refresher Course (contingent from 12/13/89).

Contractor/Supervisor (contingent from 1/23/90).

Contractor/Supervisor Refresher Course (contingent from 12/13/89).

(22)(a) *Training Provider:* EEC, Inc.

Address: 2245 North Hills Dr., Suite J, Raleigh, NC 27612, Contact: Mike Shrimanker, Phone: (919) 672-8910.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/7/89).

Abatement Worker (full from 11/16/89).

Abatement Worker Refresher Course (contingent from 5/3/89).

Abatement Worker Refresher Course (full from 5/1/90).

Contractor/Supervisor (contingent from 7/14/89).

Contractor/Supervisor (full from 5/3/90).

Contractor/Supervisor Refresher Course (contingent from 9/28/89).

Contractor/Supervisor Refresher Course (full from 5/2/90).

(23)(a) *Training Provider:* ELB & Associates, Inc.

Address: 605 Eastowne Dr., Chapel Hill, NC 27514, Contact: Michael L. Cannon, Phone: (919) 493-4471.

(b) *Approved Course:*

Abatement Worker (contingent from 6/30/88).

(24)(a) *Training Provider:* Eagle Environmental Laboratory.

Address: 1119 Ellard Rd., Fultondale, AL 35068, Contact: Mark Cambron, Phone: (205) 841-7693.

(b) *Approved Course:*

Abatement Worker (contingent from 11/14/89).

(25)(a) *Training Provider:* Energy Support Services, Inc.

Address: P.O. Box 6098, Ashville, NC 28816, Contact: Edward T. Rochelle, Phone: (704) 258-8888.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/7/89).

Abatement Worker Refresher Course (contingent from 11/8/89).

Contractor/Supervisor (contingent from 11/7/89).

Contractor/Supervisor Refresher Course (contingent from 11/8/89).

Inspector/Management Planner (contingent from 3/5/89).

Inspector/Management Planner Refresher Course (contingent from 11/8/89).

(26)(a) *Training Provider:* Enpuricon Asbestos Management.

Address: 3200 Glen Royal Rd., No. 110, Raleigh, NC 27612-7404, Contact: Terry E. Slate, Phone: (919) 781-0886.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/11/89).

Contractor/Supervisor (contingent from 2/6/89).

(27)(a) *Training Provider:* Enviro Science, Inc.

Address: P.O. Box 5804, Spartanburg, SC 29304, Contact: Andrew Schauder, Phone: (803) 585-4900.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 9/15/89).

(28)(a) *Training Provider:* Enviro-Tech.

Address: 550 Comet St., No. 16, P.O. Box 6752, Jacksonville, FL 32236, Contact: Rafael Abrev, Phone: (904) 384-0732.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/28/89 to 7/6/90 only).

Contractor/Supervisor (contingent from 7/11/89 to 7/6/90 only).

(29)(a) *Training Provider:* Environmental Control Systems Training Institute.

Address: 377 Harrods Woods Rd., Frankfurt, KY 40601, Contact: William A. Sadler, Phone: (502) 896-1245.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 8/10/89).

Inspector/Management Planner (contingent from 11/6/89).

(30)(a) *Training Provider:* Environmental Engineering Co., Inc.

Address: 500 Rivermont Rd., Columbia, SC 29210, Contact: Russell Richard, Phone: (803) 256-7846.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/17/89).

Abatement Worker (full from 9/22/89).

Abatement Worker Refresher Course (contingent from 9/28/89).

Abatement Worker Refresher Course (full from 1/31/90).

Contractor/Supervisor (contingent from 2/17/89).

Contractor/Supervisor (full from 9/22/89).

Contractor/Supervisor Refresher Course (contingent from 9/28/89).

Contractor/Supervisor Refresher Course (full from 2/1/90).

(31)(a) *Training Provider:* Environmental Resources Group.

Address: P.O. Box 18283, Memphis, TN 38181-0283, Contact: Lee C. Thompson, Phone: (901) 795-0432.

(b) *Approved Course:*

Abatement Worker (contingent from 11/14/88).

(32)(a) *Training Provider:* Environmental Training Corporation.

Address: 2252 Rocky Ridge Rd., Suite 105, Birmingham, AL 35216, Contact: William E. Hicks, Phone: (800) 677-8761.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/31/89).
Abatement Worker (full from 11/28/90).
Contractor/Supervisor (contingent from 11/1/89).
Contractor/Supervisor (full from 11/29/90).
Contractor/Supervisor Refresher Course (contingent from 11/1/89).
Contractor/Supervisor Refresher Course (full from 11/28/90).
Project Designer (contingent from 10/31/89).
Project Designer (full from 8/1/90).

(33)(a) *Training Provider:* Evans Environmental & Geological Science & Management, Inc.

Address: 2631 Southwest 27 St., Miami, FL 33133, Contact: Charles Evans, Phone: (305) 856-7458.

(b) *Approved Course:*

Abatement Worker (contingent from 1/31/89).

(34)(a) *Training Provider:* Fayetteville Technical Community College.

Address: P.O. Box 35236, Fayetteville, NC 28303, Contact: John McNeill, Phone: (919) 323-1961.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/1/89).
Contractor/Supervisor (contingent from 5/1/89).

(35)(a) *Training Provider:* Georgia Tech. Institute.

Address: O'Keefe Building, Room 029, Atlanta, GA 30332, Contact: Robert D. Schmitter, Phone: (404) 894-3806.

(b) *Approved Courses:*

Contractor/Supervisor (interim from 6/1/85 to 5/10/87).
Contractor/Supervisor (full from 5/11/87).
Contractor/Supervisor Refresher Course (contingent from 9/23/87).
Contractor/Supervisor Refresher Course (full from 7/7/88).
Inspector/Management Planner (contingent from 9/29/87).
Inspector/Management Planner (full from 10/19/87).
Inspector/Management Planner Refresher Course (contingent from 10/24/88).
Inspector/Management Planner Refresher Course (full from 11/29/88).
Project Designer (contingent from 6/1/88).
Project Designer (full from 6/7/88).
Project Designer Refresher Course (contingent from 1/31/89).
Project Designer Refresher Course (full from 3/22/89).

(36)(a) *Training Provider:* Great Barrier Insulation Co.

Address: Meador Warehouse, Western Dr., Mobile, AL 36607, Contact: Thomas Knotts, Phone: (205) 476-0350.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/13/88).
Abatement Worker (full from 4/4/89).
Abatement Worker Refresher Course (contingent from 3/30/89).

(37)(a) *Training Provider:* Harmon Engineering Associates.

Address: 1550 Pumphrey Ave., Auburn, AL 36830, Contact: Roger W. Thompson, Phone: (205) 821-9250.

(b) *Approved Course:*

Abatement Worker (contingent from 1/4/89).

(38)(a) *Training Provider:* Harrison Contracting, Inc.

Address: 3845 Viscount St., Suite 12, Memphis, TN 38118, Contact: Lee C. Thompson, Phone: (901) 795-0432.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/11/88).
Abatement Worker (full from 10/12/88).

(39)(a) *Training Provider:* Howard L. Henson Training Institute.

Address: 3592 Flat Shoals Rd., Decatur, GA 30034, Contact: Stephen Henson, Phone: (404) 243-5107.

(b) *Approved Course:*

Abatement Worker (full from 2/16/88).

(40)(a) *Training Provider:* International Association of Heat & Frost Insulation & Asbestos Workers Local Union No. 13.

Address: 145 East First St., Jacksonville, FL 32206, Contact: Tom Mallard, Phone: (904) 388-1601.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/23/89).
Abatement Worker (full from 7/27/90).
Abatement Worker Refresher Course (contingent from 1/23/89).
Abatement Worker Refresher Course (full from 6/14/90).
Contractor/Supervisor (contingent from 1/23/89).
Contractor/Supervisor (full from 4/24/89).
Contractor/Supervisor Refresher Course (contingent from 1/23/89).
Contractor/Supervisor Refresher Course (full from 6/15/90).

(41)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 46.

Address: 7111 Wright Rd., Knoxville, TN 37931, Contact: John Wade, Phone: (615) 938-1274.

(b) *Approved Courses:*

Abatement Worker (full from 10/11/88).
Abatement Worker Refresher Course (contingent from 8/16/89).
Abatement Worker Refresher Course (full from 11/8/89).
Contractor/Supervisor (full from 1/9/89).
Contractor/Supervisor Refresher Course (contingent from 10/11/88).
Contractor/Supervisor Refresher Course (full from 11/9/89).

(42)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 48.

Address: 7815 Old Morrow Rd., Atlanta, GA 30316, Contact: Timothy Fuller, Phone: (404) 478-1393.

(b) *Approved Courses:*

Abatement Worker (full from 5/4/88).
Contractor/Supervisor (full from 6/27/88).
Contractor/Supervisor Refresher Course (full from 11/2/88).
Inspector (contingent from 9/26/88).
Inspector (full from 9/28/88).

(43)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 60.

Address: 13000 Northwest 47th Ave., Miami, FL 33054, Contact: David Cleveland, Phone: (305) 681-0679.

(b) *Approved Courses:*

Abatement Worker (full from 11/15/88).
Contractor/Supervisor (full from 12/12/88).

(44)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 67.

Address: 7930 U.S. Hwy. 301 N., Tampa, FL 33637, Contact: Don Tucker, Phone: (813) 985-3067.

(b) *Approved Courses:*

Abatement Worker (full from 8/23/89).
Abatement Worker Refresher Course (contingent from 11/15/89).
Abatement Worker Refresher Course (full from 11/29/89).
Contractor/Supervisor (full from 11/29/88).
Contractor/Supervisor Refresher Course (contingent from 11/15/89).
Contractor/Supervisor Refresher Course (full from 11/28/89).

(45)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 72.

Address: 2513 Adams St., Wilmington, NC 28401, Contact: Mike Harrell, Phone: (919) 343-1730.

(b) *Approved Course:*

Abatement Worker (full from 8/10/88).

(46)(a) *Training Provider:*
International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 78.
Address: 600 Main St., Gardendale, AL 35071, Contact: Bill Boothe, Phone: (205) 631-5236.
(b) *Approved Courses:*
Abatement Worker (full from 10/25/88).
Contractor/Supervisor (contingent from 12/6/89).
Contractor/Supervisor Refresher Course (full from 5/17/89).

(47)(a) *Training Provider:*
International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 86.
Address: 4822 Charlotte Ave., Nashville, TN 37209, Contact: Don Cundiff, Phone: (615) 297-7127.
(b) *Approved Courses:*
Abatement Worker (full from 7/10/89).
Contractor/Supervisor (full from 7/10/89).

(48)(a) *Training Provider:*
International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 96.
Address: P.O. Box 623, Pooler, GA 31322-0623, Contact: Kem Dugger, Phone: (912) 748-6282.
(b) *Approved Courses:*
Abatement Worker (full from 7/26/88).
Abatement Worker Refresher Course (full from 8/17/89).
Contractor/Supervisor (full from 9/13/88).
Contractor/Supervisor Refresher Course (full from 8/17/89).

(49)(a) *Training Provider:* Kentucky Laborers Training Trust Fund.
Address: US 127 Bypass South, P.O. Box 208, Lawrenceburg, KY 40342, Contact: David Vinson, Phone: (502) 839-3155.
(b) *Approved Course:*
Abatement Worker (contingent from 1/10/89).

(50)(a) *Training Provider:* LCI Training Institute.
Address: 1432 Jocasta Dr., Lexington, KY 40502-5320, Contact: John F. Summersett, Phone: (606) 273-8881.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/9/88).
Contractor/Supervisor (contingent from 6/9/88).

(51)(a) *Training Provider:* Laborers District Council of Southeast Florida.
Address: 799 Northwest 62nd St., Miami, FL 33510, Contact: Albert Houston, Phone: (305) 754-2659.
(b) *Approved Course:*
Abatement Worker (full from 3/15/88).

(52)(a) *Training Provider:* Laborers Local Union No. 517 North & Central Florida Education & Training Fund.
Address: 4625 Old Wintergarden Rd., Bldg. A-6, Orlando, FL 32811, Contact: Patrick O' Donnell, Phone: (407) 298-3446.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/6/88).
Abatement Worker Refresher Course (contingent from 9/22/89).

(53)(a) *Training Provider:* Lang Engineering of Florida, Inc.
Address: 5432 Commerce Park Blvd., Tampa, FL 33610, Contact: Robert Lang, Phone: (813) 622-8311.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/17/89).
Abatement Worker (full from 4/2/90).
Abatement Worker Refresher Course (contingent from 8/9/89).

(54)(a) *Training Provider:* Laseter & Associates, Inc.
Address: P.O. Box 176, Collierville, TN 38017, Contact: Kenneth M. Laseter, Phone: (800) 456-8617.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/7/89).
Contractor/Supervisor (contingent from 11/7/89).
Inspector/Management Planner (contingent from 11/7/89).
Inspector/Management Planner Refresher Course (contingent from 11/8/89).

(55)(a) *Training Provider:* Law Engineering, Inc.
Address: 7616 Southland Blvd., Suite 110, Orlando, FL 32809, Contact: Diana Rigdon, Phone: (407) 855-8740.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/1/89).
Contractor/Supervisor (contingent from 9/1/89).

(56)(a) *Training Provider:* Mississippi State University, Dept. of Continuing Education.
Address: Memorial Hall-Bar Ave., P.O. Drawer 5247, Mississippi State, MS 39762-5247, Contact: Billy G. Smith, Phone: (601) 325-3473.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/15/88).
Abatement Worker (full from 3/22/90).
Contractor/Supervisor (contingent from 7/19/88).
Contractor/Supervisor (full from 6/29/89).
Contractor/Supervisor Refresher Course (contingent from 5/26/89).
Contractor/Supervisor Refresher Course (full from 3/19/90).
Inspector/Management Planner (full from 6/20/88).
Inspector/Management Planner Refresher Course (contingent from 5/26/89).
Project Designer (contingent from 12/15/88).
Project Designer Refresher Course (contingent from 5/26/89).

(57)(a) *Training Provider:* Mobile Asbestos Resource Services, Inc.
Address: 10 Airport Lane, Archer, FL 32618, Contact: Walter Heope, Phone: (904) 495-9214.
(b) *Approved Course:*
Abatement Worker (contingent from 12/6/89).

(58)(a) *Training Provider:* Mur-Shel, Inc. Asbestos Abatement.
Address: 1038 Grace Ave., Panama City, FL 32401, Contact: Lois Shelton, Phone: (904) 763-2010.
(b) *Approved Course:*
Contractor/Supervisor (contingent from 9/1/89).

(59)(a) *Training Provider:* Napri/Cisco.
Address: 4545 St. Augustine Rd., Jacksonville, FL 32207, Contact: Otey C. Reynolds, Phone: (904) 730-2222.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/13/89).
Abatement Worker Refresher Course (contingent from 10/16/89).
Contractor/Supervisor (contingent from 10/13/89).
Contractor/Supervisor Refresher Course (contingent from 10/16/89).
Inspector/Management Planner (contingent from 10/13/89).
Inspector/Management Planner Refresher Course (contingent from 10/16/89).
Project Designer (contingent from 10/13/89).
Project Designer Refresher Course (contingent from 10/16/89).

(60)(a) *Training Provider:* National Asbestos Council (NAC) Training Dept.
Address: 1777 Northeast Expressway, Suite 150, Atlanta, GA 30329, Contact: Zachary S. Cowan, III, Phone: (404) 633-2622.
(b) *Approved Courses:*
Abatement Worker (interim from 7/1/86 to 6/1/87).
Abatement Worker (full from 7/1/87).
Abatement Worker Refresher Course (contingent from 2/8/89).
Abatement Worker Refresher Course (full from 9/17/90).

(61)(a) *Training Provider:* National Monitoring Labs, Inc.

Address: 1400 North 46th St., Suite V-28, Tampa, FL 33613, Contact: Gil Bakshi, Phone: (800) 347-3414.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 4/14/89).
Contractor/Supervisor (full from 3/22/90).
Contractor/Supervisor Refresher Course (contingent from 5/23/89).
Inspector/Management Planner (contingent from 4/14/89).
Inspector/Management Planner (full from 1/19/90).
Inspector/Management Planner Refresher Course (contingent from 5/23/89).

(62)(a) *Training Provider:* Occupational Training Academy, Inc.

Address: 8409 Laurel Fair Circle, Suite 102, Tampa, FL 33610, Contact: John Burke, Phone: (813) 621-5586.

(b) *Approved Course:*

Abatement Worker (contingent from 1/17/90).

(63)(a) *Training Provider:* PDR Engineers, Inc.

Address: 2000 Lindell Ave., Nashville, TN 37203, Contact: Ayaja K. Upaphyaya, Phone: (615) 298-2065.

(b) *Approved Course:*

Inspector (contingent from 9/15/88).

(64)(a) *Training Provider:* Practical Environmental Training Institute.

Address: 230 S. Tryon St., Suite 910, Charlotte, NC 28221-6308, Contact: Dianne Christenbery, Phone: (704) 375-9382.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/20/88).
Abatement Worker (full from 10/24/88).
Abatement Worker Refresher Course (contingent from 6/18/89).
Contractor/Supervisor (contingent from 1/17/89).
Contractor/Supervisor (full from 3/20/89).
Contractor/Supervisor Refresher Course (contingent from 6/18/89).
Contractor/Supervisor Refresher Course (full from 2/6/90).

(65)(a) *Training Provider:* Republic Industries, Inc.

Address: P.O. Box 5565, Station 1, Wilmington, NC 28403, Contact: Gerry Phelps, Phone: (919) 799-2664.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/23/89).
Abatement Worker (full from 1/24/90).
Abatement Worker Refresher Course (contingent from 5/5/89).
Abatement Worker Refresher Course (full from 1/25/90).
Contractor/Supervisor (contingent from 9/22/89).
Contractor/Supervisor (full from 4/20/90).
Contractor/Supervisor Refresher Course (contingent from 6/5/89).
Contractor/Supervisor Refresher Course (full from 12/11/90).

(66)(a) *Training Provider:* Retra Services, Inc.

Address: 1730 U.S. Alt. 19 South, Suite H, Tarpon Springs, FL 34689, Contact: Phillip Paroff, Phone: (800) 548-5848.

(b) *Approved Courses:*

Abatement Worker (full from 1/24/89).
Abatement Worker Refresher Course (contingent from 12/29/88).
Abatement Worker Refresher Course (full from 1/24/89).

(67)(a) *Training Provider:* Seagull Environmental Management Asbestos Consulting & Training Systems.

Address: 903 Northwest 6th Ave., Ft. Lauderdale, FL 33311, Contact: James F. Stump, Phone: (305) 524-7208.

(b) *Approved Courses:*

Abatement Worker (full from 5/8/88).
Abatement Worker Refresher Course (contingent from 9/22/89).
Contractor/Supervisor (contingent from 2/22/89).
Contractor/Supervisor Refresher Course (contingent from 9/22/89).
Inspector/Management Planner (contingent from 10/30/89).
Inspector/Management Planner Refresher Course (contingent from 11/1/89).

(68)(a) *Training Provider:* Southeast Asbestos Free Environments, Inc.

Address: 350 South Second Ave., P.O. Box 51267, Jacksonville Beach, FL 32250, Contact: Jim Ilardi, Phone: (904) 246-8000.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/15/88).
Contractor/Supervisor (contingent from 1/18/89).

(69)(a) *Training Provider:* Technical Abatement Service, Inc.

Address: 897 East Lemon St., Bartow, FL 33830, Contact: John W. Pevy, Phone: (813) 533-0885.

(b) *Approved Course:*

Abatement Worker (contingent from 6/21/89).

(70)(a) *Training Provider:* Technical Education Resources, Inc.

Address: 2212 Swann Ave., Suite D, Tampa, FL 33606, Contact: Robert Greene, Phone: (813) 251-1095.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/16/89).
Abatement Worker Refresher Course (contingent from 11/14/89).
Contractor/Supervisor (contingent from 11/16/89).
Contractor/Supervisor Refresher Course (contingent from 11/14/89).
Inspector/Management Planner (contingent from 11/16/89).
Inspector/Management Planner Refresher Course (contingent from 11/14/89).

(71)(a) *Training Provider:* Technical Environmental Service Training Institute (T.E.S.T).

Address: Box 28210, Raleigh, NC 27611-8210, Contact: Dennis Mast, Phone: (800) 868-7246.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/22/89).
Abatement Worker (full from 7/7/89).
Abatement Worker Refresher Course (contingent from 7/18/89).
Abatement Worker Refresher Course (full from 3/29/90).
Contractor/Supervisor (contingent from 4/14/89).
Contractor/Supervisor Refresher Course (contingent from 10/20/89).
Inspector/Management Planner (contingent from 7/7/89).
Inspector/Management Planner Refresher Course (contingent from 10/20/89).

(72)(a) *Training Provider:* Technical Training Institute.

Address: 4124 Clemson Blvd., Anderson, SC 29622, Contact: Bill Martin, Phone: (803) 226-3622.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/13/89).
Abatement Worker Refresher Course (contingent from 10/17/89).
Contractor/Supervisor (contingent from 11/13/89).
Contractor/Supervisor (full from 9/7/90).
Contractor/Supervisor Refresher Course (contingent from 10/17/89).
Inspector/Management Planner (contingent from 11/13/89).
Inspector/Management Planner Refresher Course (contingent from 10/17/89).
Project Designer (contingent from 11/13/89).
Project Designer Refresher Course (contingent from 10/17/89).

(73)(a) *Training Provider:* Tennessee Environmental Services.

Address: 1804 Williamson Ct., Brentwood, TN 37027, Contact: Gary J. Lang, Phone: (615) 373-8792.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/26/89).
Abatement Worker (full from 8/15/90).
Abatement Worker Refresher Course (contingent from 11/1/89).
Abatement Worker Refresher Course (full from 8/17/90).
Contractor/Supervisor (contingent from 5/26/89).
Contractor/Supervisor Refresher Course (contingent from 11/1/89).
Contractor/Supervisor Refresher Course (full from 8/16/90).

(74)(a) *Training Provider:* Testwell Craig Labs of Florida, Inc.

Address: 7104 North 51st St., Miami, FL 33166, Contact: George W. Stowell, Phone: (305) 593-0561.

(b) *Approved Course:*

Abatement Worker (contingent from 9/8/89).

(75)(a) *Training Provider:* The Environmental Institute.

Address: COBB Corporate Center/300, 350 Franklin Rd., Marietta, GA 30067, Contact: Eva Clay, Phone: (404) 425-2000.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/10/87).
Abatement Worker (full from 5/2/88).
Contractor/Supervisor (contingent from 12/10/87).
Contractor/Supervisor (full from 2/1/88).
Contractor/Supervisor Refresher Course (full from 5/19/88).
Inspector/Management Planner (contingent from 12/10/87).
Inspector/Management Planner (full from 1/25/88).
Inspector/Management Planner Refresher Course (full from 11/8/88).
Project Designer (contingent from 2/5/88).
Project Designer (full from 2/9/88).
Project Designer Refresher Course (contingent from 4/17/89).
Project Designer Refresher Course (full from 4/19/89).

(76)(a) *Training Provider:* University of Alabama, Tuscaloosa College of Continuing Studies.

Address: P.O. Box 870388, Tuscaloosa, AL 35486-0388, Contact: William Weems, Phone: (800) 452-5923.

(b) *Approved Courses:*

Abatement Worker (full from 4/5/88).
Abatement Worker Refresher Course (contingent from 11/13/89).
Contractor/Supervisor (full from 12/14/88).
Contractor/Supervisor Refresher Course (contingent from 11/13/89).
Inspector/Management Planner (full from 5/16/88).
Inspector/Management Planner Refresher Course (contingent from 11/13/89).

(77)(a) *Training Provider:* University of Alabama-Birmingham Deep South Center.

Address: Birmingham, AL 35294, Contact: Elizabeth Lynch, Phone: (205) 934-7032.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 3/21/88).
Inspector/Management Planner (full from 3/21/88).
Inspector/Management Planner Refresher Course (contingent from 3/3/89).
Inspector/Management Planner Refresher Course (full from 7/30/90).

(78)(a) *Training Provider:* University of Florida TREEO Center.

Address: 3900 Southwest 63rd Blvd., Gainesville, FL 32608, Contact: Sara Levin, Phone: (904) 392-9570.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/12/88).
Abatement Worker Refresher Course (contingent from 1/24/89).
Contractor/Supervisor (interim from 2/9/87 to 4/30/87).
Contractor/Supervisor (full from 5/1/87).
Contractor/Supervisor Refresher Course (contingent from 1/17/89).
Inspector/Management Planner (interim from 1/27/87 to 12/14/87).
Inspector/Management Planner (contingent from 2/5/88).
Inspector/Management Planner (full from 2/15/88).
Inspector/Management Planner Refresher Course (contingent from 10/18/89).

(79)(a) *Training Provider:* University of Kentucky, College of Engineering Continuing Education.

Address: CRMS Building, Room 320, Lexington, KY 40506-0108, Contact: Liz Haden, Phone: (606) 257-3972.

(b) *Approved Courses:*

Abatement Worker Refresher Course (contingent from 3/30/89).
Contractor/Supervisor Refresher Course (contingent from 5/24/89).
Inspector Refresher Course (contingent from 3/3/89).
Inspector/Management Planner (full from 2/15/88).

(80)(a) *Training Provider:* University of North Carolina, Occupational Safety & Health Educational Resource Center.

Address: 109 Conner Dr., Suite 1101, Chapel Hill, NC 27514, Contact: Larry Hyde, Phone: (919) 962-2101.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/11/89).
Contractor/Supervisor (contingent from 6/1/88).
Contractor/Supervisor (full from 6/6/88).
Contractor/Supervisor Refresher Course (contingent from 6/7/89).
Inspector/Management Planner (contingent from 11/9/87).
Inspector/Management Planner (full from 11/9/87).
Inspector/Management Planner Refresher Course (contingent from 12/15/88).
Project Designer (contingent from 5/2/89).
Project Designer Refresher Course (contingent from 6/22/89).

(81)(a) *Training Provider:* University of North Florida, Division of Continuing Education & Extension Environmental Ed. & Safety Institute.

Address: 4567 St. Johns Bluff Rd., South Jacksonville, FL 32216, Contact: Elaine Puri, Phone: (904) 646-2690.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/1/89).
Abatement Worker (full from 5/16/90).
Abatement Worker Refresher Course (contingent from 8/25/89).
Abatement Worker Refresher Course (full from 5/16/90).
Contractor/Supervisor (contingent from 9/1/89).
Contractor/Supervisor (full from 5/17/90).
Contractor/Supervisor Refresher Course (contingent from 8/25/89).
Contractor/Supervisor Refresher Course (full from 5/17/90).
Inspector/Management Planner (contingent from 9/1/89).
Inspector/Management Planner (full from 7/27/90).

(82)(a) *Training Provider:* University of South Carolina Medical (M) Dept. of Environmental Health.

Address: 171 Ashley Ave., Charleston, SC 29425, Contact: Jan Temple, Phone: (803) 792-5315.

(b) *Approved Courses:*

Abatement Worker (full from 12/19/88).
Abatement Worker Refresher Course (contingent from 2/2/89).
Contractor/Supervisor (full from 3/8/88).
Contractor/Supervisor Refresher Course (contingent from 2/2/89).
Contractor/Supervisor Refresher Course (full from 5/3/89).
Inspector/Management Planner (full from 3/1/88).

Inspector/Management Planner Refresher Course (contingent from 2/2/89).
Inspector/Management Planner Refresher Course (full from 5/2/89).

(83)(a) *Training Provider:* University of South Carolina, School of Public Health, c/o Azimuth Inc.

Address: 386 St. Andrews Rd., Columbia, SC 29210, Contact: Donald Cobb, Phone: (803) 798-2343.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/9/89).
Abatement Worker (full from 12/7/89).
Contractor/Supervisor (contingent from 5/5/89).
Contractor/Supervisor (full from 8/21/89).
Contractor/Supervisor Refresher Course (contingent from 5/24/89).
Contractor/Supervisor Refresher Course (full from 9/20/89).

(84)(a) *Training Provider:* Westinghouse Environmental & Geotechnical Services, Inc.

Address: 3980 Dekalb Technology Parkway, Suite 700, Atlanta, GA 30340, Contact: Russell Dukes, Phone: (404) 452-1911.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/8/89).
Contractor/Supervisor (contingent from 7/18/89).
Inspector/Management Planner (contingent from 1/3/90).

(85)(a) *Training Provider:* Weston, Inc.

Address: 1635 Pumphrey Ave., Auburn, AL 36830-4303, Contact: David Whittington, Phone: (205) 826-6100.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/13/88).
Abatement Worker (full from 11/1/90).
Contractor/Supervisor (contingent from 10/13/88).
Contractor/Supervisor (full from 5/15/89).
Contractor/Supervisor Refresher Course (contingent from 1/31/89).
Contractor/Supervisor Refresher Course (full from 9/25/89).
Inspector/Management Planner (contingent from 5/13/88).
Inspector/Management Planner (full from 9/27/89).
Inspector/Management Planner Refresher Course (contingent from 12/15/88).
Inspector/Management Planner Refresher Course (full from 3/17/89).
Project Designer (contingent from 8/23/88).
Project Designer (full from 3/8/90).
Project Designer Refresher Course (contingent from 1/31/89).
Project Designer Refresher Course (full from 9/26/89).

(86)(a) *Training Provider:* Williams & Associates, Inc., Environmental Training Center.

Address: 460 Tennessee St., Memphis, TN 38103, Contact: Ruth Williams, Phone: (901) 521-9030.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/18/88).
Abatement Worker (full from 4/18/88).
Abatement Worker Refresher Course (contingent from 5/1/89).
Contractor/Supervisor (contingent from 2/18/88).
Contractor/Supervisor (full from 4/18/88).
Contractor/Supervisor Refresher Course (contingent from 5/1/89).

REGION V -- Chicago, IL

Regional Asbestos Coordinator: Anthony Restaino, EPA, Region V, 230 S. Dearborn St., (5-SPT-7), Chicago, IL 60604. (312) 886-6003, (FTS) 886-6003.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region V training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Abatement Training Institute, Inc.

Address: P.O. Box 26835, Columbus, OH 43226-0835, Contact: Steven Ritchie, Phone: (614) 267-0908.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/1/88).
Abatement Worker Refresher Course (contingent from 4/25/89).

(2)(a) *Training Provider:* Advanced Mechanical Insulation, Inc.

Address: 205 West Randolph St., Suite 1050, Chicago, IL 60606, Contact: Jeffery M. Bertrand, Phone: (312) 704-9494.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/2/89).
Contractor/Supervisor (contingent from 3/2/89).

(3)(a) *Training Provider:* Affiliated Environmental Services, Inc.

Address: 3606 Venice Rd., Sandusky, OH 44870, Contact: Jack Dauch, Phone: (419) 627-1976.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/14/88).
Abatement Worker (full from 10/24/88).
Abatement Worker Refresher Course (contingent from 2/2/89).
Contractor/Supervisor (contingent from 12/29/88).
Contractor/Supervisor (full from 2/27/89).
Contractor/Supervisor Refresher Course (contingent from 2/2/89).
Inspector/Management Planner (contingent from 5/30/89).

(4)(a) *Training Provider:* Alderink & Associates, Inc.

Address: 3221 Three Mile Rd., NW., Grand Rapids, MI 49504, Contact: Deborah C. Alderink, Phone: (616) 791-0730.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/15/88).
Abatement Worker (full from 9/6/88).
Abatement Worker Refresher Course (contingent from 9/1/88).
Abatement Worker Refresher Course (full from 9/6/88).
Contractor/Supervisor (contingent from 7/15/88).
Contractor/Supervisor (full from 9/19/88).
Contractor/Supervisor Refresher Course (contingent from 12/1/88).

(5)(a) *Training Provider:* American Asbestos Institute, Inc. (Formerly Illinois Asbestos Council).

Address: Box 7477, Springfield, IL 62791, Contact: Donald G. Handy, Phone: (217) 523-8747.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/29/89).
Abatement Worker (full from 8/14/89).
Abatement Worker Refresher Course (contingent from 8/31/89).
Contractor/Supervisor (contingent from 3/29/89).
Contractor/Supervisor (full from 8/14/89).
Contractor/Supervisor Refresher Course (contingent from 9/11/89).
Inspector/Management Planner (contingent from 3/29/89).
Inspector/Management Planner Refresher Course (contingent from 9/11/89).
Project Designer Refresher Course (contingent from 9/19/89).

(6)(a) *Training Provider:* American Environmental Institute.

Address: Main Campus, Plaza West, Cleveland, OH 44116, Contact: Gary P. Block, Phone: (216) 333-6225.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/15/88).
Abatement Worker Refresher Course (contingent from 12/8/88).

Contractor/Supervisor (contingent from 9/1/88).
Contractor/Supervisor Refresher Course (contingent from 12/6/88).
Inspector/Management Planner (contingent from 11/14/88).

(7)(a) *Training Provider:* American Industrial Hygiene Association.

Address: 475 Wolf Ledges Pkwy., Akron, OH 44311-1087, Contact: Mary Christ, Phone: (216) 762-7294.

(b) *Approved Course:*

Contractor/Supervisor (contingent from 2/23/89).

(8)(a) *Training Provider:* Applied Environmental Sciences, Inc.

Address: Minneapolis Business & Technology, Center, 511 11th Ave. S., Minneapolis, MN 55415, Contact: Franklin H. Dickson, Phone: (612) 339-5559.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/30/88).
Abatement Worker Refresher Course (contingent from 3/16/89).
Contractor/Supervisor (contingent from 2/7/89).
Contractor/Supervisor Refresher Course (contingent from 3/16/89).
Inspector/Management Planner (contingent from 10/17/89).
Inspector/Management Planner Refresher Course (contingent from 10/16/89).

(9)(a) *Training Provider:* Aries Environmental Services, Ltd.

Address: 1550 Hubbard, Batavia, IL 60510, Contact: Dennis Cesarotti, Phone: (312) 879-3006.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/13/88).
Abatement Worker Refresher Course (contingent from 1/18/89).

(10)(a) *Training Provider:* Asbestech, Inc.

Address: 326 Front St., Marietta, OH 45750, Contact: Phillip Lee, Phone: (614) 373-0714.

(b) *Approved Course:*

Abatement Worker (contingent from 11/9/89).

(11)(a) *Training Provider:* Asbestos Abatement, Inc.

Address: 2420 N. Grand River, Lansing, MI 48906, Contact: Shawn O'Callaghan, Phone: (517) 323-0053.

(b) *Approved Course:*

Abatement Worker (contingent from 7/6/88).

(12)(a) *Training Provider:* Asbestos Consulting Group, Inc.

Address: P.O. Box 3157, La Crosse, WI 54602-3157, Contact: Larry Lienau, Phone: (608) 782-1670.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 7/12/88).
Inspector/Management Planner (contingent from 10/14/88).

(13)(a) *Training Provider:* Asbestos Management, Inc.

Address: 36700 South Huron, Suite 104, New Boston, MI 48164, Contact: LaDonna Slifco, Phone: (313) 961-6135.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/12/88).
Abatement Worker Refresher Course (contingent from 1/4/89).
Contractor/Supervisor (contingent from 8/18/87).
Inspector/Management Planner (contingent from 1/26/88).
Inspector/Management Planner (full from 2/1/88).
Inspector/Management Planner Refresher Course (contingent from 11/14/88).

(14)(a) *Training Provider:* Asbestos Professional Services, Inc.

Address: 501 North Second St., Breese, IL 62230, Contact: Donald T. Anderson, Phone: (618) 526-2742.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/13/89).
Abatement Worker Refresher Course (contingent from 10/9/89).
Contractor/Supervisor (contingent from 10/13/89).
Contractor/Supervisor Refresher Course (contingent from 10/9/89).

(15)(a) *Training Provider:* Asbestos Removal Inc.

Address: Waterworks Rd., P.O. Box 522, Wabash, IN 46992, Contact: Karen S. Eckman, Phone: (219) 563-2407.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/18/89).
Abatement Worker Refresher Course (contingent from 12/20/89).

(16)(a) *Training Provider:* Asbestos Roofing Technology, Inc.

Address: P.O. Box 211, Lyons, IL 60534, Contact: Jay E. Refieuna, Phone: (312) 352-0400.

(b) *Approved Course:*

Abatement Worker (contingent from 4/13/89).

(17)(a) *Training Provider:* Asbestos Services, Inc.

Address: P.O. Box 141, Baroda, MI 49101, Contact: Dennis W. Calkins, Phone: (616) 422-2174.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/12/88).
Abatement Worker Refresher Course (contingent from 3/17/89).
Contractor/Supervisor (contingent from 8/12/88).
Contractor/Supervisor Refresher Course (contingent from 3/17/89).

(18)(a) *Training Provider:* Asbestos Technology & Training, Inc.

Address: 1186 Summit Ave., St. Paul, MN 55105, Contact: James D. Risimini, Phone: (612) 290-0342.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/27/88).
Abatement Worker Refresher Course (contingent from 2/7/89).
Contractor/Supervisor (contingent from 7/27/88).
Contractor/Supervisor Refresher Course (contingent from 2/7/89).
Inspector/Management Planner (contingent from 7/27/88).
Inspector/Management Planner Refresher Course (contingent from 2/7/89).

(19)(a) *Training Provider:* Asbestos Training & Employment, Inc. (ATEI).

Address: 809 East 11th St., Michigan City, IN 46360, Contact: Tom Dwyer, Phone: (219) 874-7348.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/15/88).
Abatement Worker (full from 5/18/88).
Abatement Worker Refresher Course (contingent from 12/11/88).
Contractor/Supervisor (contingent from 1/19/88).
Contractor/Supervisor (full from 6/20/88).
Contractor/Supervisor Refresher Course (contingent from 12/11/88).
Inspector/Management Planner (contingent from 5/13/88).
Inspector/Management Planner Refresher Course (contingent from 12/11/88).

(20)(a) *Training Provider:* Asbestos Workers Council.

Address: 1216 East McMillan St., Room 107, Cincinnati, OH 45206, Contact: Richard Black, Phone: (513) 221-5969.

(b) *Approved Course:*

Abatement Worker (contingent from 10/31/88).

(21)(a) *Training Provider:* Astesco Laboratory, Inc.

Address: P.O. Box 517, Cloverdale, IN 46120, Contact: Donald R. Allen, Phone: (317) 795-4724.

(b) *Approved Courses:*

Abatement Worker (full from 10/31/88).
Abatement Worker Refresher Course (contingent from 2/7/89).

Contractor/Supervisor (contingent from 2/23/89).
Contractor/Supervisor Refresher Course (contingent from 2/23/89).

(22)(a) *Training Provider:* BDN Industrial Hygiene Consultants.

Address: 8105 Valleywood Lane, Portage, MI 49002, Contact: Keith Nichols, Phone: (616) 329-1237.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/1/88).
Contractor/Supervisor (contingent from 10/1/87).
Contractor/Supervisor Refresher Course (contingent from 9/15/88).
Inspector/Management Planner (contingent from 1/15/88).
Inspector/Management Planner (full from 2/15/88).

(23)(a) *Training Provider:* Baker Midwest, Maple Grove, Minnesota.

Address: 10650 State Highway 152, Suite 112, Maple Grove, MN 55369, Contact: Joseph Reeves, Phone: (612) 493-2595.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/15/89).
Contractor/Supervisor (contingent from 6/15/89).

(24)(a) *Training Provider:* Ball State University.

Address: College of Sciences & Humanities, Department of Natural Resources, Muncie, IN 47306, Contact: Thad Godish, Phone: (317) 285-5780.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 3/30/89).

(25)(a) *Training Provider:* Bems Engineering, Inc.

Address: 18600 Northville Rd., Suite 200, Northville, MI 48167, Contact: Eugene L. Kunz, Phone: (313) 348-9167.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 12/29/88).
Contractor/Supervisor Refresher Course (contingent from 12/29/88).
Inspector (contingent from 1/18/89).
Inspector/Management Planner Refresher Course (contingent from 1/4/89).
Project Designer (contingent from 3/2/89).

(26)(a) *Training Provider:* Bierlein Demolition Contractors, Inc.

Address: 2903 South Graham Rd., Saginaw, MI 48608-8078, Contact: Harry T. Dryer, Jr., Phone: (517) 781-1810.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/7/89).
Contractor/Supervisor (contingent from 2/7/89).

(27)(a) *Training Provider:* Boelter Associates, Inc.

Address: 8700 West Bryn Mawr Ave., South Tower, Suite 401, Chicago, IL 60631, Contact: Philip Ramos, Phone: (312) 380-1070.

(b) *Approved Course:*

Contractor/Supervisor Refresher Course (contingent from 5/22/89).

(28)(a) *Training Provider:* Bonne Terre Training Services.

Address: P.O. Box 673, Tiffin, OH 44883, Contact: Timothy E. Blott, Phone: (419) 447-5091.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/13/89).
Abatement Worker Refresher Course (contingent from 10/12/89).

(29)(a) *Training Provider:* Bowling Green State University Environmental Health Program.

Address: 102 Health Center, Bowling Green, OH 43403-0280, Contact: Gary S. Silverman, Phone: (419) 372-7774.

(b) *Approved Course:*

Abatement Worker (contingent from 4/21/89).

(30)(a) *Training Provider:* Carnow, Conibear & Associates, Ltd.

Address: 333 West Wacker Dr., Suite 1400, Chicago, IL 60606, Contact: Victoria Musselman, Phone: (312) 782-4486.

(b) *Approved Course:*

Abatement Worker (full from 2/29/88).

(31)(a) *Training Provider:* Centin Corp.

Address: 6601 North Interchange Rd., Evansville, IN 47715, Contact: Dan Sanders, Phone: (812) 474-6220.

(b) *Approved Course:*

Abatement Worker (contingent from 3/30/89).

(32)(a) *Training Provider:* Charles J. Ogg and Associates.

Address: P.O. Box 815, Newburgh, IN 47629-0815, Contact: Charles J. Ogg, Phone: (812) 853-7607.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/29/88).
Contractor/Supervisor (contingent from 5/1/89).

(33)(a) *Training Provider:* Clayton Environmental Consultants, Inc.

Address: 22345 Roethel Dr., Novi, MI 48050, Contact: Michael Coffman, Phone: (313) 344-1770.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 1/26/88).
Inspector/Management Planner (full from 2/16/88).
Inspector/Management Planner Refresher Course (contingent from 1/26/89).

(34)(a) *Training Provider:* Cleveland Environmental Services, Inc.

Address: P.O. Box 14643, Cincinnati, OH 45214, Contact: Eugene B. Rose, Phone: (513) 921-4143.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/18/89).
Contractor/Supervisor (contingent from 4/21/89).

(35)(a) *Training Provider:* Cleveland Wrecking Co.

Address: 1400 Harrison Ave., P.O. Box 145530, Cincinnati, OH 45214, Contact: Eugene B. Rose, Phone: (513) 921-1160.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/3/89).
Abatement Worker Refresher Course (contingent from 8/3/89).
Contractor/Supervisor (contingent from 8/3/89).
Contractor/Supervisor Refresher Course (contingent from 8/3/89).

(36)(a) *Training Provider:* Columbus Paraprofessional Institute Battelle Columbus Division.

Address: 505 King Ave., Columbus, OH 43201-2693, Contact: John Simpkins, Phone: (614) 424-6424.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 4/4/88).
Inspector/Management Planner (full from 4/11/88).
Inspector/Management Planner Refresher Course (contingent from 11/30/88).

(37)(a) *Training Provider:* Construction & General Laborers Training Trust Fund.

Address: 4N250 Old Gary Ave., Cloverdale, IL 60103, Contact: Anthony Solano, Phone: (708) 653-0006.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/16/88).
Abatement Worker (full from 1/23/89).
Abatement Worker Refresher Course (contingent from 12/1/88).
Abatement Worker Refresher Course (full from 12/12/89).
Contractor/Supervisor (contingent from 9/22/89).
Contractor/Supervisor (full from 3/23/90).

(38)(a) *Training Provider:* Construction Laborer Local Union No. 496.

Address: 5945 North Ridge Rd., P.O. Box 190, Madison, OH 44057, Contact: Floyd Conrad, Phone: (216) 428-7177.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/25/89).
Abatement Worker Refresher Course (contingent from 12/1/89).
Contractor/Supervisor (contingent from 10/25/89).
Contractor/Supervisor Refresher Course (contingent from 12/1/89).
Inspector (contingent from 10/25/89).
Inspector Refresher Course (contingent from 12/1/89).

(39)(a) *Training Provider:* D/E 3.

Address: 19701 South Miles Pkwy., N-12, Warrensville, OH 44128, Contact: Harold Danto, Phone: (216) 663-1500.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/7/88).
Abatement Worker Refresher Course (contingent from 1/4/89).
Contractor/Supervisor (contingent from 9/1/89).
Contractor/Supervisor Refresher Course (contingent from 10/10/89).

(40)(a) *Training Provider:* Daniel J. Hartwig Associates, Inc.

Address: P.O. Box 31, Oregon, WI 53575-0031, Contact: Alice J. Seeliger, Phone: (608) 835-5781.

(b) *Approved Courses:*

Abatement Worker (full from 10/18/88).
Abatement Worker Refresher Course (contingent from 4/25/89).
Contractor/Supervisor (contingent from 4/11/89).
Contractor/Supervisor Refresher Course (contingent from 4/25/89).
Inspector/Management Planner (contingent from 2/9/88).
Inspector/Management Planner (full from 4/18/88).
Inspector/Management Planner Refresher Course (contingent from 2/23/89).

(41)(a) *Training Provider:* Darla Environmental, Inc.

Address: 1220 Richards St., Suite H, Joliet, IL 60433-2758, Contact: Salvador Garcia, Phone: (815) 722-5561.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/7/88).
Contractor/Supervisor (contingent from 10/7/88).

(42)(a) *Training Provider:* DeLisle Associates, Ltd.

Address: 6946 East North Ave., Kalamazoo, MI 49001, Contact: Mark A. DeLisle, Phone: (616) 385-1018.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/1/88).
Abatement Worker (full from 1/23/89).
Contractor/Supervisor (contingent from 10/5/87).
Contractor/Supervisor (full from 10/20/87).
Contractor/Supervisor Refresher Course (contingent from 9/1/88).
Inspector/Management Planner (contingent from 12/22/87).
Inspector/Management Planner (full from 1/27/88).
Inspector/Management Planner Refresher Course (contingent from 2/23/89).

(43)(a) *Training Provider:* Dore & Associates Contracting, Inc.

Address: 900 Harry S. Truman Pkwy., P.O. Box 146, Bay City, MI 48707, Contact: Joseph Goldring, Phone: (517) 684-8358.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/6/88).
Abatement Worker (full from 7/25/88).
Abatement Worker Refresher Course (contingent from 10/31/88).
Contractor/Supervisor (contingent from 10/31/88).
Contractor/Supervisor Refresher Course (contingent from 3/29/89).

(44)(a) *Training Provider:* Ecological Services, Inc.

Address: 107 Clay St., Tiffin, OH 44880-0715, Contact: Harish N. Pandhi, Phone: (419) 447-2514.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/1/88 to 11/30/90 only).
Abatement Worker Refresher Course (contingent from 3/7/89 to 11/30/90 only).

(45)(a) *Training Provider:* Emscoa-Emergency Medical Service Consultants of America.

Address: 12125 South 90th Ave., Palos Park, IL 60464, Contact: Fred Debow, Phone: (708) 448-7500.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/3/89).
Abatement Worker Refresher Course (contingent from 12/20/89).
Contractor/Supervisor (contingent from 11/3/89).
Contractor/Supervisor Refresher Course (contingent from 12/20/89).

(46)(a) *Training Provider:* Environment Technology of Fort Wayne, Inc.

Address: 9208 Hessen Cassel Rd., Fort Wayne, IN 46816, Contact: Randy C. Aumsbaugh, Phone: (219) 447-3141.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/5/89).
Abatement Worker (full from 3/21/90).
Abatement Worker Refresher Course (contingent from 4/7/89).

(47)(a) *Training Provider:* Environmental & Occupational Consulting & Training, Inc.

Address: 3410 East Cork St., Kalamazoo, MI 49001, Contact: A. Clark Kahn, Phone: (616) 388-8099.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/1/89).
Abatement Worker Refresher Course (contingent from 3/7/89).
Contractor/Supervisor (contingent from 3/1/89).
Contractor/Supervisor Refresher Course (contingent from 3/7/89).

(48)(a) *Training Provider:* Environmental Abatement Systems, Inc.

Address: 6416 Ellsworth, Detroit, MI 48238, Contact: Farrell Davis, Phone: (313) 345-3154.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/12/88).
Contractor/Supervisor (contingent from 8/12/88).

(49)(a) *Training Provider:* Environmental Diversified Services, Inc.

Address: 24356 Sherwood, Center Line, MI 48015-1061, Contact: Michael D. Berg, Phone: (313) 757-4800.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/30/89).
Abatement Worker Refresher Course (contingent from 4/14/89).
Contractor/Supervisor (contingent from 3/30/89).
Contractor/Supervisor Refresher Course (contingent from 4/11/89).

(50)(a) *Training Provider:* Environmental Management Consultants, Inc.

Address: 5201 Middle Mt. Vernon Rd., Evansville, IN 47712, Contact: Barbara S. Kramer, Phone: (812) 424-7768.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/13/89).
Abatement Worker (full from 12/13/89).
Contractor/Supervisor (contingent from 3/9/89).
Contractor/Supervisor (full from 12/13/89).

(51)(a) *Training Provider:* Environmental Management Institute.

Address: 5610 Crawfordsville Rd. 15, Indianapolis, IN 46224, Contact: Jack Leonard, Phone: (800) 488-8842.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/13/88).

Abatement Worker (full from 1/10/89).
Abatement Worker Refresher Course (contingent from 12/27/88).
Contractor/Supervisor (contingent from 9/15/88).
Contractor/Supervisor (full from 1/10/89).
Contractor/Supervisor Refresher Course (contingent from 12/27/88).
Inspector/Management Planner (contingent from 5/9/88).
Inspector/Management Planner (full from 6/6/88).
Inspector/Management Planner Refresher Course (contingent from 12/6/88).

(52)(a) *Training Provider:*
Environmental Professionals, Inc.
Address: 1405 Newton St., Tallmadge, OH 44278, Contact: Edward C. Bruner, Phone: (216) 633-4435.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 2/2/88).
Contractor/Supervisor Refresher Course (contingent from 1/26/89).

(53)(a) *Training Provider:*
Environmental Rehab, Inc.
Address: 700 Coronis Cir., Green Bay, WI 54304, Contact: Randy LaCrosse, Phone: (414) 337-0650.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/4/89).
Abatement Worker (full from 3/29/89).
Abatement Worker Refresher Course (contingent from 10/13/89).

(54)(a) *Training Provider:*
Environmental Response Systems, Inc.
Address: 5319 Broadway Ave., Cleveland, OH 44127, Contact: Paul J. Stroud, Jr., Phone: (216) 883-1152.
(b) *Approved Course:*
Contractor/Supervisor (contingent from 12/29/88).

(55)(a) *Training Provider:*
Environmental Safety Training Services, Inc.
Address: 11802 Hanson Rd., Algonquin, IL 60102, Contact: Robert Sayre, Phone: (217) 525-6161.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/1/88).
Abatement Worker Refresher Course (contingent from 1/17/89).

(56)(a) *Training Provider:*
Environmental Science & Engineering, Inc.
Address: 8901 North Industrial Rd., Peoria, IL 61615, Contact: Phillip G. Zerwer, Phone: (309) 692-4422.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 5/30/89).
Contractor/Supervisor Refresher Course (contingent from 6/9/89).

(57)(a) *Training Provider:*
Environmental Technologies Co. (Formerly Lee Environmental Services, Inc.).
Address: 2727 Second Ave., Detroit, MI 48201, Contact: David W. McDowell, Phone: (313) 961-4230.
(b) *Approved Course:*
Abatement Worker (contingent from 3/17/89).

(58)(a) *Training Provider:*
Environmental Training Institute.
Address: 4708 Angold Rd., Toledo, OH 43615, Contact: Dale Bruhl, Jr., Phone: (419) 382-9200.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/10/89).
Abatement Worker Refresher Course (contingent from 10/5/89).

(59)(a) *Training Provider:* Envirplus, Inc.
Address: 600 Hartrey Ave., Suite 203 A, Evanston, IL 60202, Contact: Salvadar Garcia, Phone: (312) 475-0022.
(b) *Approved Course:*
Contractor/Supervisor (contingent from 8/31/89).

(60)(a) *Training Provider:* Escor, Inc.
Address: 540 Frontage Rd., Suite 211, Northfield, IL 60093, Contact: R. Eric Zimmerman, Phone: (312) 501-2190.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/12/88).
Abatement Worker Refresher Course (contingent from 9/15/88).
Contractor/Supervisor (contingent from 8/12/88).
Contractor/Supervisor Refresher Course (contingent from 9/15/88).
Inspector/Management Planner (contingent from 8/12/88).
Inspector/Management Planner Refresher Course (contingent from 9/1/88).

(61)(a) *Training Provider:* Foley Occupational Health Consulting.
Address: 2400 North Reynolds Rd., Toledo, OH 43615, Contact: E.D. Foley, Jr., Phone: (419) 531-7191.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 2/4/88).
Contractor/Supervisor Refresher Course (contingent from 1/4/89).

(62)(a) *Training Provider:* G & H Contracting Associates, Ltd.
Address: 300 Acorn St., P.O. Box 49080, Plainwell, MI 49080, Contact: Jeffrey C. Gren, Phone: (616) 685-1606.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/7/88).
Abatement Worker (full from 11/7/88).
Contractor/Supervisor (contingent from 4/21/89).

(63)(a) *Training Provider:* Gandee & Associates, Inc.
Address: 4488 Mobile Dr., Columbus, OH 43220, Contact: Kurt Varga, Phone: (614) 459-8338.
(b) *Approved Courses:*
Abatement Worker (full from 1/17/89).
Abatement Worker Refresher Course (contingent from 8/17/89).
Contractor/Supervisor (contingent from 6/1/88).
Contractor/Supervisor (full from 8/29/88).
Contractor/Supervisor Refresher Course (contingent from 7/26/89).
Inspector/Management Planner (contingent from 3/3/89).
Inspector/Management Planner Refresher Course (contingent from 8/2/89).

(64)(a) *Training Provider:* Hazard Management Group, Inc.
Address: P.O. Box 627, Ashtabula, OH 44004, Contact: Gabriel Demshar, Jr., Phone: (216) 992-1122.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/4/89).
Contractor/Supervisor (contingent from 1/4/89).

(65)(a) *Training Provider:* Hazardous Materials Institute, Inc.
Address: 1550 Old Henderson Rd., Suite N-232, Columbus, OH 43222, Contact: Al Wilson, Phone: (614) 459-1105.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/12/88).
Abatement Worker Refresher Course (contingent from 9/15/88).
Contractor/Supervisor (contingent from 8/12/88).
Contractor/Supervisor Refresher Course (contingent from 9/15/88).
Inspector/Management Planner (contingent from 8/3/88).
Inspector/Management Planner Refresher Course (contingent from 9/15/88).
Project Designer (contingent from 10/14/88).

(66)(a) *Training Provider:* Heat & Frost Insulators & Asbestos Workers Local Union No. 17 Apprentice Training Center.
Address: 3850 South Racine Ave., Chicago, IL 60609, Contact: John P. Shine, Phone: (312) 247-1007.
(b) *Approved Courses:*

Abatement Worker (contingent from 10/2/87).
Abatement Worker (full from 11/8/87).
Abatement Worker Refresher Course (contingent from 10/14/88).
Abatement Worker Refresher Course (full from 1/9/90).
Contractor/Supervisor (contingent from 3/21/88).
Contractor/Supervisor (full from 3/22/88).
Contractor/Supervisor Refresher Course (contingent from 12/1/88).

(67)(a) *Training Provider:* Heat & Frost Insulators & Asbestos Workers Local Union No. 34.

Address: 708 South 10th St., Minneapolis, MN 55404, Contact: Lee Houske, Phone: (612) 332-3216.

(b) *Approved Courses:*

Abatement Worker (full from 11/8/88).
Contractor/Supervisor (full from 11/8/88).

(68)(a) *Training Provider:* Helix Environmental, Inc.

Address: 416 Triangle, Dayton, OH 45419, Contact: Ralph Froehlich, Phone: (513) 298-2990.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/1/89).
Contractor/Supervisor (contingent from 11/1/89).
Contractor/Supervisor Refresher Course (contingent from 12/19/89).
Inspector/Management Planner (contingent from 11/1/89).
Inspector/Management Planner Refresher Course (contingent from 12/20/89).

(69)(a) *Training Provider:* I.P.C. of Chicago.

Address: 4309 West Henderson, Chicago, IL 60641, Contact: Robert G. Cooley, Phone: (312) 718-7395.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/5/87).
Abatement Worker (full from 8/8/88).
Contractor/Supervisor (contingent from 2/7/89).
Contractor/Supervisor Refresher Course (contingent from 2/7/89).
Inspector/Management Planner Refresher Course (contingent from 2/7/89).

(70)(a) *Training Provider:* Illinois Environmental Institute.

Address: 8425 West 95th St., Hickory Hills, IL 60457, Contact: William T. Giova, Phone: (312) 839-9000.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/3/89).
Abatement Worker (full from 2/9/90).

(71)(a) *Training Provider:* Illinois Laborers' & Contractors Training Program.

Address: R.R. 3, Mount Sterling, IL 62353, Contact: Tony Romolo, Phone: (217) 773-2741.

(b) *Approved Courses:*

Abatement Worker (full from 12/15/85).
Abatement Worker Refresher Course (contingent from 9/1/88).
Abatement Worker Refresher Course (full from 12/13/89).
Contractor/Supervisor (contingent from 2/9/88).
Contractor/Supervisor (full from 3/14/88).
Contractor/Supervisor Refresher Course (contingent from 2/27/89).

(72)(a) *Training Provider:* Ilse Engineering, Inc.

Address: 7177 Arrowhead Rd., Duluth, MN 55811, Contact: John F. Ilse, Phone: (218) 729-6858.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/15/88).
Contractor/Supervisor Refresher Course (contingent from 4/11/89).

(73)(a) *Training Provider:* Indiana Laborers Training Trust Fund.

Address: P.O. Box 758, Bedford, IN 47421, Contact: Richard Fassino, Phone: (812) 279-9751.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/11/87).
Abatement Worker (full from 2/22/88).
Abatement Worker Refresher Course (contingent from 10/7/88).
Abatement Worker Refresher Course (full from 1/17/90).
Contractor/Supervisor (contingent from 6/2/88).
Contractor/Supervisor (full from 8/15/88).
Contractor/Supervisor Refresher Course (contingent from 6/14/89).

(74)(a) *Training Provider:* Industrial Environmental Consultants.

Address: 2875 Northwind, Suite 113, East Lansing, MI 48823, Contact: James C. Fox, Phone: (517) 332-7026.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/9/88).
Abatement Worker (full from 1/23/89).
Abatement Worker Refresher Course (contingent from 1/18/89).
Contractor/Supervisor (contingent from 8/3/88).
Contractor/Supervisor (full from 1/23/89).
Contractor/Supervisor Refresher Course (contingent from 12/5/88).
Inspector/Management Planner (contingent from 3/1/88).

(75)(a) *Training Provider:* Institute for Environmental Assessment.

Address: 2829 Verndale Ave., Anoka, MN 55303, Contact: Bill Sloan, Phone: (612) 427-5310.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/12/88).
Contractor/Supervisor (contingent from 8/12/88).
Inspector/Management Planner Refresher Course (contingent from 2/21/89).

(76)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 19.

Address: 9401 West Beloit Rd., No. 209, Milwaukee, WI 53227, Contact: Randall Gottsacker, Phone: (414) 321-2828.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/29/88).
Abatement Worker (full from 5/15/89).
Abatement Worker Refresher Course (contingent from 1/26/89).
Contractor/Supervisor (contingent from 12/29/88).
Contractor/Supervisor Refresher Course (contingent from 1/26/89).

(77)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 34.

Address: 708 South 10th St., Minneapolis, MN 55404, Contact: Lee A. Houske, Phone: (612) 332-3216.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/8/88).
Contractor/Supervisor (contingent from 9/1/88).

(78)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers, Local Union No. 127.

Address: 2787 Pamela Dr., Green Bay, WI 54302, Contact: Michael A. Simons, Phone: (414) 468-5973.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/18/89).
Abatement Worker Refresher Course (contingent from 1/18/89).
Contractor/Supervisor (contingent from 1/18/89).

(79)(a) *Training Provider:* JWP Enterprises, Ltd.

Address: 122 Water St., Baraboo, WI 53913, Contact: Stephen P. Jandrowski, Phone: (608) 356-2101.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/6/89).
Abatement Worker Refresher Course (contingent from 6/8/89).
Contractor/Supervisor (contingent from 6/6/89).
Contractor/Supervisor (full from 12/7/89).
Contractor/Supervisor Refresher Course (contingent from 6/8/89).

(80)(a) *Training Provider:* Kemron Environmental Services, Inc.

Address: 32740 Northwestern Hwy., Farmington Hills, MI 48018, Contact: Sara A. Bassett, Phone: (313) 626-2426.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/2/89).
Contractor/Supervisor (contingent from 5/13/88).
Contractor/Supervisor (full from 2/27/89).
Contractor/Supervisor Refresher Course (contingent from 2/7/89).
Inspector/Management Planner (contingent from 3/25/88).
Inspector/Management Planner Refresher Course (contingent from 1/4/89).

(81)(a) *Training Provider:* Keter Environmental Ltd.

Address: 699 Edgewood Ave., Elmhurst, IL 60126, Contact: Philip Pekron, Phone: (312) 941-0201.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/27/89).
Abatement Worker Refresher Course (contingent from 11/28/89).
Contractor/Supervisor Refresher Course (contingent from 12/20/89).

(82)(a) *Training Provider:* Lakeland Contractors, Inc.

Address: 7615-B St. Clair St., Mentor, OH 44060, Contact: Rex Harris, Phone: (216) 942-0006.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/4/89).
Abatement Worker Refresher Course (contingent from 4/11/89).

(83)(a) *Training Provider:* Lepi Enterprises, Inc.

Address: 917 Main St., Dresden, OH 43821, Contact: James R. Lepi, Phone: (614) 754-1162.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/6/88).
Abatement Worker (full from 6/8/90).
Abatement Worker Refresher Course (contingent from 4/25/89).

(84)(a) *Training Provider:* Lyle Training Institute.

Address: 41 South Grant, Columbus, OH 43215, Contact: Andrea D. Hamblin, Phone: (614) 224-8822.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/21/88).
Contractor/Supervisor (contingent from 3/7/89).
Inspector/Management Planner (contingent from 6/30/88).
Inspector/Management Planner Refresher Course (contingent from 9/16/89).

(85)(a) *Training Provider:* M.K. Moore & Sons, Inc.

Address: 5150 Wagoner-Ford Rd., Dayton, OH 45414, Contact: Catherine C. Buchanan, Phone: (513) 236-1812.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/31/89).
Abatement Worker (full from 5/3/90).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(86)(a) *Training Provider:* MacNeil Environmental, Inc.

Address: 755 East Cliff Rd., Burnsville, IL 55332, Contact: Phil Allmon, Phone: (612) 890-3452.

(b) *Approved Courses:*

Contractor/Supervisor Refresher Course (contingent from 7/6/89).
Inspector/Management Planner Refresher Course (contingent from 7/6/89).

(87)(a) *Training Provider:* Manage Right Asbestos Consultants.

Address: 314 West Genesee Ave., Saginaw, MI 48602, Contact: Mary Margaret Brown, Phone: (517) 753-9290.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/24/89).
Abatement Worker Refresher Course (contingent from 4/27/89).
Contractor/Supervisor (contingent from 4/7/89).

(88)(a) *Training Provider:* Mark A. Kriesemint, Ltd.

Address: P.O. Box 06198, Chicago, IL 60606-0198, Contact: Mark Kriesemint, Phone: (312) 463-0206.

(b) *Approved Course:*

Abatement Worker (contingent from 10/31/88).

(89)(a) *Training Provider:* McDowell Business Training Center.

Address: 1313 S. Michigan Ave., 3rd Floor, Chicago, IL 60605, Contact: Edward McDowell, Phone: (312) 427-2598.

(b) *Approved Course:*

Abatement Worker (contingent from 10/6/89).

(90)(a) *Training Provider:* Metropolitan Detroit AFL-CIO Training Center.

Address: 14333 Prairie, Detroit, MI 48238, Contact: Richard M. King, Phone: (313) 863-1000.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/12/88).
Contractor/Supervisor (contingent from 8/12/88).

(91)(a) *Training Provider:* Michigan Laborers Training Institute.

Address: 11155 South Beardslee Rd., Perry, MI 48872, Contact: Edwin H. McDonald, Phone: (517) 625-4919.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/9/88).
Abatement Worker (full from 5/2/88).
Abatement Worker Refresher Course (contingent from 11/14/88).
Contractor/Supervisor (contingent from 4/6/88).
Contractor/Supervisor (full from 5/6/88).
Contractor/Supervisor Refresher Course (contingent from 11/14/88).

(92)(a) *Training Provider:* Mid-Central Illinois District Council of Carpenters.

Address: 910 Brenkman Dr., Pekin, IL 61554, Contact: Jeff Burnett, Phone: (309) 353-4232.

(b) *Approved Courses:*

Abatement Worker Refresher Course (contingent from 9/1/89).
Contractor/Supervisor Refresher Course (contingent from 9/1/89).

(93)(a) *Training Provider:* Midwest Center for Occupational Health & Safety.

Address: 640 Jackson St., St. Paul, MN 55101, Contact: Ruth K. McIntyre, Phone: (612) 221-3992.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/16/88).
Contractor/Supervisor (full from 11/28/88).
Contractor/Supervisor Refresher Course (contingent from 12/1/88).
Inspector/Management Planner (contingent from 5/9/88).
Inspector/Management Planner (full from 5/23/88).
Inspector/Management Planner Refresher Course (contingent from 12/1/88).

(94)(a) *Training Provider:* Midwest Health Training.

Address: 3920 Central, Western Springs, IL 60558, Contact: H.C. Brown, Phone: (312) 246-9527.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/25/88).
Abatement Worker (full from 4/25/88).
Abatement Worker Refresher Course (contingent from 9/15/88).
Contractor/Supervisor (contingent from 2/23/89).

(95)(a) *Training Provider:* Milwaukee Asbestos Information Center.

Address: 2224 South Kinnickinnic Ave., Milwaukee, WI 53207, Contact: Thomas R. Ortell, Phone: (414) 744-8100.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/1/88).
Abatement Worker Refresher Course (contingent from 2/23/89).
Contractor/Supervisor (contingent from 12/1/88).
Contractor/Supervisor Refresher Course (contingent from 2/23/89).
Inspector/Management Planner (contingent from 3/2/89).
Inspector/Management Planner Refresher Course (contingent from 2/23/89).
Project Designer (contingent from 9/22/89).
Project Designer Refresher Course (contingent from 10/16/89).

(96)(a) *Training Provider:* Moraine Valley Community College.

Address: 10900 South 88th Ave., Palos Hills, IL 60465, Contact: Dale Luecht, Phone: (708) 974-5735.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/7/89).
Abatement Worker (full from 1/11/90).
Abatement Worker Refresher Course (contingent from 3/16/89).
Abatement Worker Refresher Course (full from 1/25/90).
Contractor/Supervisor (contingent from 8/12/88).
Contractor/Supervisor (full from 5/7/90).
Contractor/Supervisor Refresher Course (contingent from 12/6/88).
Contractor/Supervisor Refresher Course (full from 5/1/90).
Inspector/Management Planner (full from 2/9/88).
Inspector/Management Planner Refresher Course (contingent from 12/6/88).
Inspector/Management Planner Refresher Course (full from 4/30/90).

(97)(a) *Training Provider:* National Asbestos Abatement Corp.

Address: 1198 Robert T. Longway Blvd., Flint, MI 48503, Contact: James S. Sheaffer, Phone: (313) 232-7100.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/7/89).
Abatement Worker (full from 4/18/89).

(98)(a) *Training Provider:* National Institute for Abatement Education.

Address: 5501 Williamsburg Way No. 305, Madison, WI 53719, Contact: Dean Leischow, Phone: (608) 271-7281.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/15/88 to 11/30/90 **only**).
Contractor/Supervisor (contingent from 7/15/88 to 11/30/90 **only**).

(99)(a) *Training Provider:* Northern Safety Consultants, Inc.

Address: 1406 Lincoln Ave., Marquette, MI 49855, Contact: Christopher M. Baker, Phone: (906) 228-5161.

(b) *Approved Courses:*

Abatement Worker (full from 5/31/88).
Contractor/Supervisor (full from 5/31/88).
Contractor/Supervisor Refresher Course (contingent from 10/7/88).

(100)(a) *Training Provider:* Northland Environmental Services, Inc.

Address: P.O. Box 909, Stevens Point, WI 54481, Contact: Bob Voborsky, Phone: (715) 341-9699.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/18/89).
Abatement Worker Refresher Course (contingent from 1/18/89).
Contractor/Supervisor (contingent from 1/18/89).
Contractor/Supervisor Refresher Course (contingent from 1/18/89).

(101)(a) *Training Provider:* Nova Environmental Services.

Address: Suite 420 Hazeltine Gates, 1107 Hazeltine Blvd., Chaska, MN 55318, Contact: Deborah S. Green, Phone: (612) 448-9393.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/24/87).
Abatement Worker Refresher Course (contingent from 4/13/89).
Contractor/Supervisor (contingent from 9/1/88).
Contractor/Supervisor Refresher Course (contingent from 4/13/89).

(102)(a) *Training Provider:* Nova Environmental, Inc.

Address: 5340 Plymouth Rd., Suite 210, Ann Arbor, MI 48105, Contact: Kary S. Amin, Phone: (313) 930-0995.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/13/88).
Abatement Worker (full from 3/27/89).
Contractor/Supervisor (contingent from 10/7/88).
Contractor/Supervisor (full from 3/27/89).
Contractor/Supervisor Refresher Course (contingent from 10/7/88).
Inspector/Management Planner (contingent from 10/7/88).
Inspector/Management Planner Refresher Course (contingent from 11/14/88).

(103)(a) *Training Provider:* Occupational Safety Training, Inc.

Address: 237 Dino Dr., Suite A, Ann Arbor, MI 48103, Contact: Randy Gamble, Phone: (313) 426-3300.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/17/89).
Abatement Worker Refresher Course (contingent from 3/17/89).
Contractor/Supervisor (contingent from 1/26/89).
Contractor/Supervisor (full from 3/13/89).
Contractor/Supervisor Refresher Course (contingent from 1/17/89).

(104)(a) *Training Provider:* Ohio Asbestos Workers Council.

Address: 1216 East McMillan St., Room 107, Cincinnati, OH 45206, Contact: Larry Briley, Phone: (513) 221-5969.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 2/17/88).
Contractor/Supervisor (full from 5/12/88).

(105)(a) *Training Provider:* Ohio Laborers' Training & Upgrading Trust Fund.

Address: 25721 Coshocton Rd., P.O. Box 218, Howard, OH 43028, Contact: John L. Railing, Phone: (614) 599-7915.

(b) *Approved Courses:*

Abatement Worker (full from 4/11/88).
Abatement Worker Refresher Course (contingent from 9/1/88).
Abatement Worker Refresher Course (full from 2/8/90).
Contractor/Supervisor (contingent from 7/27/88).
Contractor/Supervisor (full from 2/8/90).
Contractor/Supervisor Refresher Course (contingent from 6/6/89).
Contractor/Supervisor Refresher Course (full from 2/9/90).

(106)(a) *Training Provider:* Olive - Harvey College Skill Center.

Address: 10001 South Woodlawn Ave., Chicago, IL 60628, Contact: Verondo Tucker, Phone: (312) 660-4841.

(b) *Approved Course:*

Abatement Worker (contingent from 3/6/89).

(107)(a) *Training Provider:* Peoria Public Schools.

Address: 3202 North Wisconsin Ave., Peoria, IL 61603, Contact: Emil S. Steinseifer, Phone: (309) 672-6512.

(b) *Approved Course:*
Abatement Worker Refresher Course (contingent from 11/14/88).

(108)(a) *Training Provider:*
Professional Asbestos Control Company Inc.
Address: 5739 West Howard St., Niles, IL 60648, Contact: William Foss, Phone: (312) 647-0077.

(b) *Approved Courses:*
Abatement Worker (contingent from 11/2/89).
Contractor/Supervisor (contingent from 11/2/89).

(109)(a) *Training Provider:*
Professional Asbestos Labor Services, Inc.
Address: 2955 W 5th Ave., Gary, IN 46404-1201, Contact: George Bradley, Phone: (219) 883-8541.

(b) *Approved Courses:*
Abatement Worker (contingent from 5/18/88).
Abatement Worker Refresher Course (contingent from 12/5/88).

(110)(a) *Training Provider:*
Professional Service Industries, Inc.
Address: 510 East 22nd St., Lombard, IL 60148, Contact: W. K. Swartzendruber, Phone: (312) 691-1490.

(b) *Approved Courses:*
Contractor/Supervisor (contingent from 11/13/89).
Contractor/Supervisor Refresher Course (contingent from 10/11/69).
Inspector/Management Planner (contingent from 12/15/88).
Inspector/Management Planner (full from 4/27/89).
Inspector/Management Planner Refresher Course (contingent from 10/11/89).

(111)(a) *Training Provider:* Rend Lake College.
Address: Department AAA, Ina, IL 62846, Contact: Fred Bruno, Phone: (618) 437-5321.

(b) *Approved Courses:*
Abatement Worker (contingent from 3/29/89).
Abatement Worker (full from 10/10/89).

(112)(a) *Training Provider:* Risk Services, Inc.
Address: 26384 Ford Rd., Suite 200, Dearborn Heights, MI 48127, Contact: Michael J. Borsuck, Phone: (313) 565-5225.

(b) *Approved Courses:*
Abatement Worker (contingent from 4/11/89).
Abatement Worker Refresher Course (contingent from 4/11/89).
Contractor/Supervisor (contingent from 4/11/89).
Contractor/Supervisor Refresher Course (contingent from 4/11/89).

(113)(a) *Training Provider:* S.Z. Mansdorf & Associates, Inc.
Address: 2000 Chestnut Blvd., Cuyahoga Falls, OH 44223-1323, Contact: S. Z. Mansdorf, Phone: (216) 928-5434.

(b) *Approved Courses:*
Contractor/Supervisor (contingent from 1/15/88).
Contractor/Supervisor (full from 2/12/88).
Contractor/Supervisor Refresher Course (contingent from 1/19/89).
Inspector/Management Planner (contingent from 6/24/88).
Inspector/Management Planner (full from 3/23/90).
Inspector/Management Planner Refresher Course (contingent from 1/26/89).

(114)(a) *Training Provider:* SEMCOSH.
Address: 2727 2nd Ave., Detroit, MI 48201-2654, Contact: Barbara Boylan, Phone: (313) 961-3345.

(b) *Approved Courses:*
Abatement Worker (contingent from 10/13/87).
Abatement Worker (full from 4/25/88).
Abatement Worker Refresher Course (contingent from 4/25/89).

(115)(a) *Training Provider:* Safer Foundation.
Address: 571 West Jackson Blvd., Chicago, IL 60606, Contact: C. Bentley or P. Bergmann, Phone: (312) 922-2200.

(b) *Approved Courses:*
Abatement Worker (contingent from 9/15/88).
Abatement Worker (full from 7/7/89).
Abatement Worker Refresher Course (contingent from 11/3/89).

(116)(a) *Training Provider:* Safety Dynamics.
Address: 124 Massachussetts Ave., Poland, OH 44514, Contact: Ronald G. Zikmund, Phone: (216) 757-3899.

(b) *Approved Course:*
Abatement Worker (contingent from 8/18/89).

(117)(a) *Training Provider:* Safety Training of Illinois.
Address: 1515 South Park, Springfield, IL 62704, Contact: S. David Farris, Phone: (217) 787-9091.

(b) *Approved Courses:*
Abatement Worker (full from 12/18/87).
Abatement Worker Refresher Course (contingent from 11/14/88).

(118)(a) *Training Provider:* Sear Corp.
Address: 8802 Bash St., Suite F, Indianapolis, IN 46256, Contact: Todd M. Strader, Phone: (317) 576-5845.

(b) *Approved Courses:*
Abatement Worker (contingent from 3/3/89).
Abatement Worker (full from 7/7/89).

(119)(a) *Training Provider:* Seneca Asbestos Removal & Control, Inc.
Address: 76 Ashwood Rd., Tiffin, OH 44883, Contact: Roger Bakies, Phone: (419) 447-0202.

(b) *Approved Courses:*
Abatement Worker (contingent from 4/21/89).
Abatement Worker (full from 11/15/89).

(120)(a) *Training Provider:* Testing Engineers & Consultants, Inc.
Address: 1333 Rochester Rd., P.O. Box 249, Troy, MI 48099, Contact: Karl D. Agee, Phone: (313) 588-6200.

(b) *Approved Courses:*
Inspector/Management Planner (contingent from 5/9/88).
Inspector/Management Planner (full from 8/22/88).
Inspector/Management Planner Refresher Course (contingent from 3/30/89).

(121)(a) *Training Provider:* The American Center for Educational Development, Inc.
Address: 316 S. Wabash, 2nd Floor, Chicago, IL 60604, Contact: Ron Broom, Phone: (312) 322-2233.

(b) *Approved Courses:*
Abatement Worker (contingent from 11/3/89).
Abatement Worker (full from 12/13/89).
Abatement Worker Refresher Course (contingent from 12/1/89).
Contractor/Supervisor (contingent from 11/3/89).
Contractor/Supervisor (full from 1/19/90).
Contractor/Supervisor Refresher Course (contingent from 12/1/89).

(122)(a) *Training Provider:* The Brand Companies.
Address: 1420 Renaissance Dr., Park Ridge, IL 60068, Contact: Frank J. Barta, Phone: (312) 298-1200.

(b) *Approved Courses:*
Abatement Worker (contingent from 1/4/89).
Abatement Worker (full from 5/1/89).
Abatement Worker Refresher Course (contingent from 6/8/89).
Contractor/Supervisor (contingent from 7/7/89).
Contractor/Supervisor Refresher Course (contingent from 8/16/89).

(123)(a) *Training Provider:* The Clear Consortium.
Address: 127 North Dearborn St., Chicago, IL 60602, Contact: Lorenzo Higgins, Phone: (312) 368-0211.

(b) *Approved Course:*

Abatement Worker (contingent from 7/18/89 to 11/30/90 only).

(124)(a) *Training Provider:* The Environmental Institute.

Address: 314 South State Ave., Indianapolis, IN 46201, Contact: Cindy Witte, Phone: (317) 269-3618.

(b) *Approved Course:*

Abatement Worker Refresher Course (contingent from 12/22/88).

(125)(a) *Training Provider:* Thermico, Inc.

Address: 3405 Centennial Dr., P.O. Box 2151, Midland, MI 48641-2151, Contact: Kevin Otis, Phone: (517) 496-2927.

(b) *Approved Course:*

Abatement Worker (contingent from 4/7/89).

(126)(a) *Training Provider:* Tillotson Consulting & Training, Inc.

Address: 9332 Oakview, Portage, MI 49002, Contact: Michael R. Tillotson, Phone: (616) 323-2124.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/29/88).
Abatement Worker Refresher Course (contingent from 12/11/88).
Contractor/Supervisor (contingent from 12/29/88).
Contractor/Supervisor Refresher Course (contingent from 12/11/88).
Inspector/Management Planner (contingent from 12/29/88).
Inspector/Management Planner Refresher Course (contingent from 12/11/88).

(127)(a) *Training Provider:* Trust Thermal Systems.

Address: 10445 Wright Rd., Eagle, MI 48822, Contact: Thomas Lowe, Phone: (517) 626-6791.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/1/88).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/30/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(128)(a) *Training Provider:* United Science Industries, Inc.

Address: 621 Ninth St., P.O. Box 21, Carlyle, IL 62231, Contact: Mr. Koch, Phone: (618) 594-8670.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/4/89).
Abatement Worker (full from 5/17/90).
Abatement Worker Refresher Course (contingent from 12/20/89).
Contractor/Supervisor (contingent from 12/4/89).
Contractor/Supervisor (full from 5/17/90).
Contractor/Supervisor Refresher Course (contingent from 12/20/89).

(129)(a) *Training Provider:* University of Cincinnati, Medical Center Department of Environmental Health Kettering Laboratory.

Address: 3223 Eden Ave., ML 056, Cincinnati, OH 45267-0056, Contact: Judy L. Jarrell, Phone: (513) 558-1730.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/14/88).
Abatement Worker (full from 11/15/88).
Abatement Worker Refresher Course (contingent from 7/11/89).
Contractor/Supervisor (full from 10/20/87).
Contractor/Supervisor Refresher Course (contingent from 10/4/89).
Inspector/Management Planner (full from 11/16/87).
Inspector/Management Planner Refresher Course (contingent from 12/1/88).
Project Designer (contingent from 10/26/89).

(130)(a) *Training Provider:* University of Illinois at Chicago M.A.I.C.

Address: 1440 West Washington, Chicago, IL 60607, Contact: Dick Lyons, Phone: (312) 829-1277.

(b) *Approved Courses:*

Abatement Worker (interim from 10/1/87 to 12/14/87).
Abatement Worker (contingent from 10/2/87).
Abatement Worker (full from 4/5/88).
Abatement Worker Refresher Course (contingent from 11/14/88).
Contractor/Supervisor (full from 6/1/86).
Contractor/Supervisor Refresher Course (contingent from 1/18/89).
Inspector/Management Planner (contingent from 10/2/87).
Inspector/Management Planner (full from 10/21/87).
Inspector/Management Planner Refresher Course (full from 2/17/89).
Project Designer (contingent from 7/7/89).

(131)(a) *Training Provider:* University of Wisconsin.

Address: 422 Lowell Hall, 610 Langdon St., Madison, WI 53703, Contact: Neil DeClercq, Phone: (608) 262-2111.

(b) *Approved Courses:*

Abatement Worker (full from 12/7/87).
Abatement Worker Refresher Course (contingent from 12/15/88).
Contractor/Supervisor (contingent from 2/2/88).
Contractor/Supervisor (full from 9/1/88).
Contractor/Supervisor Refresher Course (contingent from 12/15/88).
Inspector/Management Planner (contingent from 2/2/88).
Inspector/Management Planner (full from 2/22/88).
Inspector/Management Planner Refresher Course (contingent from 12/15/88).
Project Designer (contingent from 9/15/88).
Project Designer Refresher Course (contingent from 3/3/89).

(132)(a) *Training Provider:* William E. Fink & Associates.

Address: 25 South State St., Girard, OH 44420, Contact: William Fink, Phone: (216) 545-1222.

(b) *Approved Course:*

Contractor/Supervisor (contingent from 8/18/89).

(133)(a) *Training Provider:* William E. Fink & Associates, Inc.

Address: 3695 Indian Run, Suite 5, Canfield, OH 44406, Contact: William E. Fink, Phone: (216) 533-6299.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/11/88).
Abatement Worker (full from 2/13/89).
Abatement Worker Refresher Course (contingent from 8/11/88).
Contractor/Supervisor (contingent from 8/18/89).
Contractor/Supervisor Refresher Course (contingent from 10/13/89).

(134)(a) *Training Provider:* Wisconsin Laborers Training Center.

Address: P.O. Box 150, Almond, WI 54909, Contact: Dean Jensen, Phone: (715) 366-8221.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/8/87).
Abatement Worker (full from 11/29/88).
Abatement Worker Refresher Course (contingent from 11/14/88).
Contractor/Supervisor (contingent from 11/21/88).
Contractor/Supervisor (full from 11/29/88).

(135)(a) *Training Provider:* Wonder Makers, Inc.

Address: 3101 Darmo St., Kalamazoo, MI 49008, Contact: Michael A. Pinto, Phone: (616) 382-4154.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/16/89).
Abatement Worker Refresher Course (contingent from 3/9/89).
Contractor/Supervisor (contingent from 3/16/89).
Contractor/Supervisor Refresher Course (contingent from 3/16/89).

Inspector/Management Planner (contingent from 4/21/89).
Inspector/Management Planner Refresher Course (contingent from 4/21/89).

REGION VI -- Dallas, TX

Regional Asbestos Coordinator: John West, 6T-PT, EPA, Region VI, 1445 Ross Avenue, Dallas, TX 75202-2733. (214) 655-7244, (FTS) 255-7244.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region VI training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* AAR, Training.
Address: P.O. Box 1064, Channelview, TX 77530-1064, Contact: David S. Barnett, Phone: (713) 452-6406.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/26/89).
Abatement Worker (full from 11/1/90).

(2)(a) *Training Provider:* AC & C Systems Corp.
Address: 5909 Northwest Expressway, Suite 310, Oklahoma City, OK 73132, Contact: Turner Stallings, Phone: (405) 728-0444.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/20/88).
Contractor/Supervisor (contingent from 10/26/88).

(3)(a) *Training Provider:* AEGIS Associates, Inc.
Address: 4868 Research Dr., San Antonio, TX 78240, Contact: John J. Gokelman, Phone: (512) 641-8320.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/14/89 to 4/16/90 **only**).
Contractor/Supervisor (contingent from 5/25/89 to 4/16/90 **only**).
Inspector Refresher Course (contingent from 4/4/89 to 4/16/90 **only**).

(4)(a) *Training Provider:* ASCTC Asbestos Training Center.
Address: P.O. Box 1419, Albany, LA 70711, Contact: Alphia Ross, Phone: (800) 999-7986.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/4/90).
Abatement Worker Refresher Course (contingent from 2/4/90).
Contractor/Supervisor (contingent from 2/4/90).
Inspector/Management Planner (contingent from 2/5/90).
Inspector/Management Planner Refresher Course (contingent from 2/5/90).
Project Designer (contingent from 2/5/90).
Project Designer Refresher Course (contingent from 2/5/90).

(5)(a) *Training Provider:* Abateco, Inc.
Address: 10696 Haddington, Suite 100, Houston, TX 77043, Contact: E. H. Zansler, Phone: (713) 461-0692.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/14/89).
Abatement Worker (full from 3/7/90).
Abatement Worker Refresher Course (contingent from 3/17/89).
Abatement Worker Refresher Course (full from 8/21/90).
Contractor/Supervisor (contingent from 8/14/89).
Contractor/Supervisor (full from 3/9/90).
Contractor/Supervisor Refresher Course (full from 8/22/90).

(6)(a) *Training Provider:* Ahera Training Institute.
Address: 12116A Jekel Circle, Austin, TX 78727, Contact: Rick Orr, Phone: (512) 837-8851.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/10/89).
Abatement Worker (full from 5/9/90).
Abatement Worker Refresher Course (contingent from 12/15/89).
Contractor/Supervisor (contingent from 1/11/88).
Contractor/Supervisor (full from 3/1/88).
Contractor/Supervisor Refresher Course (contingent from 12/15/89).
Inspector/Management Planner (full from 1/25/88).
Inspector/Management Planner Refresher Course (contingent from 10/2/89).

(7)(a) *Training Provider:* Allied Training Systems.
Address: 1808 D Brothers Blvd., College Station, TX 77840, Contact: Dan Sheppard, Phone: (409) 693-8300.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/30/89).
Abatement Worker Refresher Course (contingent from 10/26/89).
Contractor/Supervisor (contingent from 8/25/89).
Contractor/Supervisor Refresher Course (contingent from 10/31/89).

(8)(a) *Training Provider:* Allison Sheridan Environmental Training Services.
Address: P.O. Box 6101, Katy, TX 77492, Contact: Don Rawlings, Phone: (713) 492-2309.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/8/90).
Contractor/Supervisor (contingent from 1/8/90).

(9)(a) *Training Provider:* American Specialty Contractors, Inc.
Address: 8181 West Darryl Pkwy., Baton Rouge, LA 70896, Contact: Kurt Jones, Phone: (504) 926-9624.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/18/88).
Abatement Worker (full from 5/3/89).
Contractor/Supervisor (contingent from 11/18/88).
Contractor/Supervisor (full from 5/4/89).

(10)(a) *Training Provider:* Analytical Labs Training Center.
Address: 218 Market St., Baird, TX 79504, Contact: Bob Dye, Phone: (915) 854-1264.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/21/89).
Abatement Worker (full from 2/7/90).
Contractor/Supervisor (contingent from 4/21/89).
Contractor/Supervisor (full from 2/9/90).

(11)(a) *Training Provider:* Asbestos Consulting Services, Inc. (A.C.S.I.).
Address: 13523 Ridgeview Dr., Baton Rouge, LA 70817, Contact: Ken Talbot, Phone: (504) 756-9180.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/10/90).
Abatement Worker Refresher Course (contingent from 3/16/89).
Contractor/Supervisor (contingent from 3/2/89).
Contractor/Supervisor (full from 5/11/90).
Contractor/Supervisor Refresher Course (contingent from 3/16/89).
Inspector/Management Planner (contingent from 3/2/89).
Inspector/Management Planner Refresher Course (contingent from 3/16/89).

(12)(a) *Training Provider:* Asbestos Education Services.
Address: 11609 Barchetta Dr., Austin, TX 78758, Contact: Rick Orr, Phone: (512) 832-5298.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/5/89).
Abatement Worker Refresher Course (contingent from 11/28/89).

Contractor/Supervisor (contingent from 10/25/89).
Contractor/Supervisor Refresher Course (contingent from 10/5/89).
Project Designer Refresher Course (contingent from 11/28/89).

(13)(a) *Training Provider:* Asbestos Surveys & Training, Inc.

Address: 5959 Central Crest, Houston, TX 77092, Contact: J. T. Stoneburger, Phone: (713) 681-2639.

(b) *Approved Course:*

Abatement Worker (full from 10/22/87 to 5/1/89 only).

(14)(a) *Training Provider:* Ashley Environmental Services.

Address: 5959 Central Crest, Houston, TX 77092, Contact: Jesse Ashley, Phone: (713) 683-6311.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/27/89).
Abatement Worker (full from 9/13/90).
Contractor/Supervisor (contingent from 9/29/89).

(15)(a) *Training Provider:* Beaumont Business Incubator.

Address: 1090 South Fourth St., Beaumont, TX 77701, Contact: Jerry Plaia, Phone: (409) 835-1554.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/29/90).
Abatement Worker Refresher Course (contingent from 1/29/90).
Contractor/Supervisor (contingent from 1/29/90).
Contractor/Supervisor Refresher Course (contingent from 1/29/90).

(16)(a) *Training Provider:* Carpenters Apprenticeship Training School.

Address: 8505 Glen Vista, Houston, TX 77061, Contact: S. C. Strunk, Jr., Phone: (713) 641-1011.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/8/88).
Abatement Worker Refresher Course (contingent from 7/8/88).

(17)(a) *Training Provider:* Certified Asbestos Training Institute, Inc.

Address: 4202 Argentina Cir., Pasadena, TX 77504, Contact: Clyde O. Waters, Phone: (713) 487-3155.

(b) *Approved Course:*

Abatement Worker (contingent from 4/20/88).

(18)(a) *Training Provider:* El Paso Community College, Transmountain Campus.

Address: P.O. Box 20500, El Paso, TX 79998, Contact: Jim Rath, Phone: (915) 757-5053.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/28/89).
Abatement Worker Refresher Course (contingent from 11/28/89).
Contractor/Supervisor (contingent from 11/28/89).
Contractor/Supervisor Refresher Course (contingent from 11/28/89).

(19)(a) *Training Provider:* Enviro-Con Services, Inc.

Address: 4916 Highway 6 North, Houston, TX 77084, Contact: Douglas S. Shotwell, Phone: (713) 855-9677.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/22/89).
Abatement Worker (full from 3/28/90).
Abatement Worker Refresher Course (contingent from 10/2/89).
Contractor/Supervisor (contingent from 9/21/89).
Contractor/Supervisor (full from 3/29/90).
Contractor/Supervisor Refresher Course (contingent from 10/2/89).

(20)(a) *Training Provider:* Environmental Consultant Service.

Address: P.O. Box 586422, Dallas, TX 75258, Contact: Thomas Armstrong, Phone: (214) 638-3589.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/20/89).
Contractor/Supervisor (contingent from 4/20/89).
Contractor/Supervisor Refresher Course (contingent from 9/1/89).
Inspector/Management Planner (contingent from 4/20/89).

(21)(a) *Training Provider:* Environmental Monitoring Service, Inc. (EMS).

Address: 12731 Research Blvd., Building A, Austin, TX 78759, Contact: Rick Pruett, Phone: (512) 335-9116.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/1/88).
Abatement Worker Refresher Course (contingent from 1/15/90).
Contractor/Supervisor (contingent from 2/5/90).
Contractor/Supervisor Refresher Course (contingent from 2/5/90).
Inspector/Management Planner (contingent from 4/19/89).

(22)(a) *Training Provider:* Environmental Specialists, Inc.

Address: 320 Broadway SE., Albuquerque, NM 87102, Contact: Fernando E.C Debaca, Phone: (505) 243-2499.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/25/90).
Contractor/Supervisor (contingent from 6/28/90).
Inspector/Management Planner (contingent from 7/27/90).

(23)(a) *Training Provider:* Field Sciences Institute.

Address: 2309 Renard Pl. SE., Suite 104, Albuquerque, NM 87106, Contact: Robert L. Edgar, Phone: (505) 764-9251.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/13/89).
Abatement Worker Refresher Course (full from 8/1/89).
Contractor/Supervisor (contingent from 4/22/88).
Contractor/Supervisor Refresher Course (full from 8/1/89).
Inspector Refresher Course (full from 8/1/89).
Inspector/Management Planner (contingent from 4/22/88).

(24)(a) *Training Provider:* Fort Worth Independent School District.

Address: 3210 West Lancaster, Fort Worth, TX 76107, Contact: H. D. Duncan, Phone: (817) 336-8311.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/27/88).
Abatement Worker Refresher Course (contingent from 7/27/88).

(25)(a) *Training Provider:* GEBCO Associates, Inc.

Address: 669 Airport Freeway, Suite 210, Hurst, TX 76053-3962, Contact: Ed Kirch, Phone: (817) 268-4006.

(b) *Approved Courses:*

Abatement Worker (interim from 4/15/87 to 8/19/87).
Abatement Worker (full from 8/20/87).
Abatement Worker Refresher Course (contingent from 5/16/88).
Abatement Worker Refresher Course (full from 7/5/89).
Contractor/Supervisor (contingent from 3/15/88).
Contractor/Supervisor (full from 7/24/89).
Contractor/Supervisor Refresher Course (contingent from 7/27/88).
Contractor/Supervisor Refresher Course (full from 7/28/89).
Inspector/Management Planner (full from 3/7/88).
Inspector/Management Planner Refresher Course (contingent from 7/27/88).
Inspector/Management Planner Refresher Course (full from 6/16/89).

(26)(a) *Training Provider:* Gary LaFrance Abatement Workers Training Program.

Address: 4802 Prestwick, Tyler, TX 75703, Contact: Gary G. LaFrance, Phone: (214) 581-8852.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/14/88).
Abatement Worker (full from 4/12/89).

(27)(a) *Training Provider:* Houston Independent School District.

Address: 228 McCarty Dr., Houston, TX 77029, Contact: Bennie Jenkins, Phone: (713) 676-2222 Ext. 396.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/10/89).
Abatement Worker Refresher Course (contingent from 10/12/89).

(28)(a) *Training Provider:* IMPACT Inc.

Address: 5330 Griggs Rd., Houston, TX 77021, Contact: Edgar Harvey, Phone: (713) 845-2416.

(b) *Approved Course:*

Abatement Worker (contingent from 8/17/89).

(29)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 22.

Address: 3219 Pasadena Blvd., Pasadena, TX 77503, Contact: Robert M. Chadwick, Phone: (713) 473-0888.

(b) *Approved Courses:*

Abatement Worker (interim from 10/1/87 to 10/4/87).
Abatement Worker (contingent from 10/5/87).
Abatement Worker (full from 3/22/88).
Abatement Worker Refresher Course (contingent from 10/5/87).
Contractor/Supervisor (full from 6/27/88).

(30)(a) *Training Provider:* K & T Safety Service, Inc.

Address: 9888 Bissonnett, Houston, TX 77036, Contact: Kevin Clothier, Phone: (713) 988-9021.

(b) *Approved Course:*

Abatement Worker (contingent from 3/28/89).

(31)(a) *Training Provider:* Keers Environmental, Inc.

Address: P.O. Box 6848, Albuquerque, NM 89197, Contact: Robert W. Keers, Phone: (505) 888-9525.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 3/28/89).
Contractor/Supervisor Refresher Course (contingent from 10/6/89).

(32)(a) *Training Provider:* Kiser Engineering, Inc.

Address: 211 North River St., Seguin, TX 78155, Contact: Nathan Kiser, Phone: (512) 372-2570.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/27/89).
Abatement Worker Refresher Course (contingent from 8/24/89).
Contractor/Supervisor (contingent from 3/29/89).
Contractor/Supervisor Refresher Course (contingent from 8/24/89).

(33)(a) *Training Provider:* Lafayette Parish School Board Asbestos Training Program.

Address: P.O. Drawer 2158, Lafayette, LA 70502, Contact: Salvador E. Longo, Phone: (504) 837-3740.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/21/88).
Contractor/Supervisor (contingent from 7/21/88).

(34)(a) *Training Provider:* Lamar University, Hazardous Materials Program.

Address: P.O. Box 10008, Beaumont, TX 77710, Contact: Marion Foster, Phone: (409) 880-2369.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/19/88).
Abatement Worker (full from 4/26/89).
Contractor/Supervisor (contingent from 5/20/88).
Contractor/Supervisor Refresher Course (contingent from 10/24/88).
Inspector/Management Planner (contingent from 1/15/90).

(35)(a) *Training Provider:* Law Engineering.

Address: 5500 Guhn Rd., Houston, TX 77040, Contact: Richard MacIntyre, Phone: (713) 939-7161.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/14/89).
Contractor/Supervisor (contingent from 2/26/90).

(36)(a) *Training Provider:* Little-Tex Insulation Co., Inc.

Address: 911 North Frio St., San Antonio, TX 78207, Contact: Dan Juepe, Phone: (512) 222-8094.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/1/88).
Contractor/Supervisor (contingent from 8/1/88).

(37)(a) *Training Provider:* Louisiana Laborers Union-AGC Training Fund.

Address: P.O. Box 376, Livonia, LA 70755-0376, Contact: Jamie Peers, Phone: (504) 637-2311.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/15/88).
Abatement Worker Refresher Course (contingent from 4/4/89).

(38)(a) *Training Provider:* Louisiana State University Agricultural & Mechanical College.

Address: 181 Pleasant Hall, Baton Rouge, LA 70803-1520, Contact: Marcia L. Gilman, Phone: (504) 388-6591.

(b) *Approved Courses:*

Abatement Worker (full from 1/1/88).
Abatement Worker Refresher Course (contingent from 11/16/88).
Abatement Worker Refresher Course (full from 3/8/89).
Contractor/Supervisor (contingent from 10/6/87).
Contractor/Supervisor (full from 4/7/88).
Contractor/Supervisor Refresher Course (contingent from 11/16/88).
Contractor/Supervisor Refresher Course (full from 3/6/89).
Inspector/Management Planner (full from 1/18/88).
Inspector/Management Planner Refresher Course (full from 3/7/89).
Project Designer (contingent from 10/13/89).
Project Designer Refresher Course (contingent from 10/13/89).

(39)(a) *Training Provider:* MARTECH International, Inc.

Address: P.O. Box 460, Broussard, LA 70518-0460, Contact: Gary Lawley, Phone: (318) 364-3880.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/17/89).
Contractor/Supervisor (contingent from 1/17/89).

(40)(a) *Training Provider:* Maxim Engineers Inc.

Address: 2342 Fabens, Dallas, TX 75229, Contact: Leonard Kern, Phone: (214) 247-7575.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/6/89).
Abatement Worker (full from 6/9/89).
Inspector (contingent from 12/11/89).
Inspector (full from 8/9/90).

(41)(a) *Training Provider:* McClelland Management Services in Conjunction with the University of Houston.

Address: 6100 Hillcroft, Suite 220, Houston, TX 77081, Contact: David Winburne, Phone: (713) 995-9000.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/5/90).
Abatement Worker Refresher Course (contingent from 1/5/90).
Contractor/Supervisor (contingent from 1/5/90).

Contractor/Supervisor (full from 9/21/90).
Contractor/Supervisor Refresher Course (contingent from 1/5/90).
Inspector/Management Planner (contingent from 1/5/90).
Inspector/Management Planner Refresher Course (contingent from 1/5/90).
Project Designer (contingent from 1/5/90).
Project Designer Refresher Course (contingent from 1/5/90).

(42)(a) *Training Provider:* Meador-Wright & Associates, Inc.

Address: 6211 W. Northwest Hwy., Suite C260, Dallas, TX 75225, Contact: Carl Teel, Phone: (214) 691-3485.

(b) *Approved Course:*

Inspector/Management Planner (full from 10/12/89).

(43)(a) *Training Provider:* Micro Analysis Laboratory, Inc.

Address: 8499 Greenville Ave., Dallas, TX 75231, Contact: Carolyn Jones, Phone: (214) 340-0890.

(b) *Approved Course:*

Abatement Worker (contingent from 9/6/89).

(44)(a) *Training Provider:* Moore-Norman Area Vocational Training School.

Address: 4701 12th Ave. NW., Norman, OK 73069, Contact: Frank Coulter, Phone: (405) 364-7032.

(b) *Approved Courses:*

Abatement Worker (full from 3/3/86).
Abatement Worker Refresher Course (contingent from 5/19/89).
Abatement Worker Refresher Course (full from 12/14/89).
Contractor/Supervisor (full from 12/14/89).
Contractor/Supervisor Refresher Course (contingent from 12/14/89).
Contractor/Supervisor Refresher Course (full from 12/14/89).
Inspector/Management Planner (contingent from 1/25/88).
Inspector/Management Planner (full from 4/4/88).
Inspector/Management Planner Refresher Course (contingent from 5/19/89).

(45)(a) *Training Provider:* NATEC of Texas, Inc.

Address: 5555 West Loop South, Suite 636, Bellaire, TX 77041, Contact: Paul Speck, Phone: (713) 524-9444.

(b) *Approved Course:*

Abatement Worker (contingent from 11/22/89).

(46)(a) *Training Provider:* Nelson/Imel, Inc.

Address: 3900 Morrison Cir., Norman, OK 73072, Contact: Deborah Nelson, Phone: (405) 364-3278.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/27/88).
Abatement Worker Refresher Course (contingent from 11/16/88).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(47)(a) *Training Provider:* O'Connor McMahon, Inc.

Address: 1505 Luna Rd., Suite 114, Carrollton, TX 75006, Contact: James M. Walley, Phone: (214) 245-3300.

(b) *Approved Course:*

Abatement Worker (contingent from 7/27/88).

(48)(a) *Training Provider:* Occupational Safety Health Consultants of Louisiana.

Address: 1034 Willow Brook Ave., Denham Springs, LA 70726, Contact: Clayton Joe Mitchell, Phone: (504) 664-0288.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/22/89).
Abatement Worker Refresher Course (contingent from 8/22/89).
Contractor/Supervisor (contingent from 8/22/89).
Contractor/Supervisor Refresher Course (contingent from 8/22/89).

(49)(a) *Training Provider:* Occupational Safety Training Institute.

Address: 9000 West Bellfort, Suite 450, Houston, TX 77031, Contact: Eva Bonilla, Phone: (713) 270-6882.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/27/88).
Abatement Worker Refresher Course (contingent from 12/8/88).
Contractor/Supervisor (contingent from 7/27/88).
Contractor/Supervisor (full from 7/27/88).
Contractor/Supervisor Refresher Course (contingent from 12/8/88).
Inspector/Management Planner (contingent from 9/15/88).

(50)(a) *Training Provider:* PAN AM World Services Inc.

Address: P. O. Box 58938, Houston, TX 77258, Contact: Audrey Hall, Phone: (713) 483-7951.

(b) *Approved Course:*

Abatement Worker (contingent from 8/23/89).

(51)(a) *Training Provider:* Phoenix Services.

Address: 1813 Harvard, Richardson, TX 75081, Contact: Alcee Chriss, Phone: (214) 437-0150.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/18/89).
Abatement Worker Refresher Course (contingent from 11/29/89).
Contractor/Supervisor (contingent from 11/29/89).
Contractor/Supervisor Refresher Course (contingent from 11/29/89).

(52)(a) *Training Provider:* Protechnics Environmental Services.

Address: 14760 Memorial Dr., Suite 105, Houston, TX 77079, Contact: Fabian Limon, Phone: (713) 496-9874.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/5/89).
Abatement Worker (full from 6/30/89).
Contractor/Supervisor (contingent from 6/22/89).
Contractor/Supervisor Refresher Course (contingent from 11/28/89).

(53)(a) *Training Provider:* R & H Associates, Inc.

Address: P.O. Box 8948, Albuquerque, NM 87198, Contact: Floyd Rubi, Phone: (505) 275-1045.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/12/89).
Abatement Worker Refresher Course (contingent from 4/20/89).
Contractor/Supervisor (contingent from 1/12/89).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).
Inspector/Management Planner (contingent from 1/12/89).
Inspector/Management Planner Refresher Course (contingent from 4/20/89).

(54)(a) *Training Provider:* Raba-Kistner Training Institute.

Address: 12821 West Golden Ln., San Antonio, TX 78249, Contact: Donald Fetzer, Phone: (512) 699-9090.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/23/89).
Contractor/Supervisor Refresher Course (contingent from 12/13/89).
Inspector/Management Planner (contingent from 12/13/89).
Inspector/Management Planner Refresher Course (contingent from 12/13/89).

(55)(a) *Training Provider:* Region 6 Environmental Training.

Address: P.O. Box 180435, Austin, TX 78718-0435, Contact: Charlotte Ramzel, Phone: (512) 837-9296.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/27/88).
Abatement Worker (full from 3/21/90).
Abatement Worker Refresher Course (contingent from 3/2/89).

Contractor/Supervisor (contingent from 7/27/88).
Contractor/Supervisor (full from 3/22/90).
Contractor/Supervisor Refresher Course (contingent from 3/2/89).
Inspector/Management Planner (contingent from 10/10/89).
Inspector/Management Planner Refresher Course (contingent from 10/10/89).

(56)(a) *Training Provider:* Regional Environmental Training Center.

Address: 9024 Garland Rd., Dallas, TX 75218, Contact: Lisa Adams, Phone: (214) 328-2928.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/30/89).
Contractor/Supervisor (contingent from 9/1/89).
Inspector/Management Planner (contingent from 9/1/89).

(57)(a) *Training Provider:* Safety & Health Research Institute.

Address: 500 One Gallery Tower, 13355 Noel Rd., P.O. Box 612245, Dallas, TX 75261, Contact: Ted Davis, Phone: (214) 851-3536.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/12/88 to 1/1/89 **only**).
Contractor/Supervisor (contingent from 9/12/88 to 1/1/89 **only**).
Inspector/Management Planner (contingent from 9/12/88).

(58)(a) *Training Provider:* Southeast Arkansas Education Services Cooperative.

Address: U.A.M. - Willard Hall, P.O. Box 3507, Monticello, AR 71655, Contact: Lloyd Crossley, Phone: (501) 367-6848.

(b) *Approved Course:*

Inspector/Management Planner Refresher Course (contingent from 4/11/89).

(59)(a) *Training Provider:* Specialized Environmental Services Inc.

Address: 6614 John Ralston Rd., Houston, TX 77049, Contact: James Homminga, Phone: (713) 458-7274.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/29/89).
Abatement Worker (full from 4/19/90).
Abatement Worker Refresher Course (contingent from 11/29/89).

(60)(a) *Training Provider:* Specialized Environmental Training.

Address: P.O. Box 7001, Pasadena, TX 77508-7001, Contact: Sue Ann Williams, Phone: (713) 487-4415.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/12/90).
Contractor/Supervisor (contingent from 1/12/90).

(61)(a) *Training Provider:* Texas Engineering Extension Service Building Codes Inspection Training Division.

Address: Texas A & M University System, College Station, TX 77843-8000, Contact: Tom Garner, Phone: (409) 845-6682.

(b) *Approved Courses:*

Abatement Worker (full from 9/28/87).
Contractor/Supervisor (interim from 5/26/86 to 9/13/87).
Contractor/Supervisor (full from 9/14/87).
Contractor/Supervisor Refresher Course (full from 3/2/89).
Inspector/Management Planner (full from 10/19/87).
Inspector/Management Planner Refresher Course (full from 3/1/89).

(62)(a) *Training Provider:* Texas State Conference of Painters & Allied Trades.

Address: P.O. Box 130441, Houston, TX 77223-0441, Contact: John S. Dolney, Phone: (713) 527-0152.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/7/89).
Abatement Worker Refresher Course (contingent from 11/7/89).

(63)(a) *Training Provider:* Texas Tech University.

Address: P.O. Box 4369, Lubbock, TX 79409, Contact: Paul Cotter, Phone: (806) 742-3876.

(b) *Approved Courses:*

Abatement Worker (full from 6/1/90).
Abatement Worker Refresher Course (contingent from 11/7/89).
Abatement Worker Refresher Course (full from 11/14/90).
Contractor/Supervisor (contingent from 10/31/89).
Contractor/Supervisor (full from 6/8/90).
Contractor/Supervisor Refresher Course (contingent from 11/7/89).
Contractor/Supervisor Refresher Course (full from 11/15/90).

(64)(a) *Training Provider:* The Institute of Environmental Training.

Address: P.O. Box 171181, San Antonio, TX 78217, Contact: Gene Walker, Phone: (512) 822-8438.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/27/88).
Abatement Worker (full from 9/17/90).
Abatement Worker Refresher Course (contingent from 8/17/89).
Contractor/Supervisor (contingent from 10/20/88).
Contractor/Supervisor (full from 9/19/90).
Contractor/Supervisor Refresher Course (contingent from 8/8/89).
Inspector/Management Planner (contingent from 8/24/89).

(65)(a) *Training Provider:* Tulane University, School of Public Health & Tropical Medicine, Dept. of Environmental Health Sciences.

Address: 1430 Tulane Ave., New Orleans, LA 70112, Contact: Shau-Wong-Chang, Phone: (504) 588-5374.

(b) *Approved Courses:*

Contractor/Supervisor (interim from 3/17/87 to 9/14/87).
Contractor/Supervisor (full from 9/15/87).
Contractor/Supervisor Refresher Course (contingent from 8/1/89).
Inspector/Management Planner (contingent from 5/20/88).
Inspector/Management Planner Refresher Course (contingent from 8/1/89).

(66)(a) *Training Provider:* U.S. Analytical, Inc.

Address: P.O. Box 801, Abilene, TX 79604, Contact: Keith Davis, Phone: (915) 698-3293.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/13/89).
Abatement Worker Refresher Course (contingent from 1/5/89).
Contractor/Supervisor (contingent from 2/13/89).

(67)(a) *Training Provider:* U.S. Environmental Services.

Address: 3801 Hulen St., Suite 105, Ft. Worth, TX 76107, Contact: Steve Salmon, Phone: (817) 429-9400.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/8/90).
Abatement Worker Refresher Course (contingent from 1/8/90).

(68)(a) *Training Provider:* University of Arkansas at Little Rock Biology Dept.

Address: 33rd & University, Little Rock, AR 72204, Contact: Phyllis Moore, Phone: (501) 569-3270.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 8/18/89).
Inspector/Management Planner (full from 6/15/90).
Inspector/Management Planner Refresher Course (contingent from 6/20/89).

(69)(a) *Training Provider:* University of Arkansas at Little Rock, Labor Education Program.

Address: 2801 South University, Little Rock, AR 72204, Contact: James E. Nickles, Phone: (501) 569-8483.

(b) *Approved Courses:*
Inspector/Management Planner (contingent from 9/14/88).
Inspector/Management Planner Refresher Course (contingent from 9/12/88).

(70)(a) *Training Provider:* University of New Mexico, The Environmental Training Center Division of Continuing Education.
Address: 1634 University Blvd. NE., Albuquerque, NM 87131, Contact: Ed Rodriguez, Phone: (505) 277-9060.

(b) *Approved Courses:*
Abatement Worker (contingent from 10/4/89).
Abatement Worker Refresher Course (contingent from 10/5/89).
Contractor/Supervisor (contingent from 6/16/85).
Contractor/Supervisor Refresher Course (contingent from 10/5/89).
Inspector/Management Planner (contingent from 9/19/89).
Inspector/Management Planner Refresher Course (contingent from 10/6/89).

(71)(a) *Training Provider:* University of Texas Health Center at TYLER.
Address: P.O. Box 2003, Tyler, TX 75710, Contact: Ronald F. Dodson, Phone: (214) 877-7877.

(b) *Approved Courses:*
Abatement Worker (full from 4/14/88).
Abatement Worker Refresher Course (full from 10/27/88).
Contractor/Supervisor (full from 3/7/88).
Contractor/Supervisor Refresher Course (full from 10/27/88).
Inspector/Management Planner (contingent from 3/21/88).
Inspector/Management Planner (full from 4/15/88).
Inspector/Management Planner Refresher Course (full from 10/27/88).

(72)(a) *Training Provider:* University of Texas at Arlington Civil Engineering Dept.
Address: Box 19308, Arlington, TX 76019, Contact: Vic Argento, Phone: (817) 273-3694.

(b) *Approved Courses:*
Contractor/Supervisor (full from 7/14/86).
Contractor/Supervisor Refresher Course (full from 9/26/88).
Inspector/Management Planner (full from 10/19/87).
Inspector/Management Planner Refresher Course (full from 9/26/88).

(73)(a) *Training Provider:* Veltmann Engineering.
Address: Midland Air Park, P.O. Box 50741, Midland, TX 79710, Contact: Clyde Veltmann, Phone: (915) 683-1874.

(b) *Approved Courses:*
Abatement Worker (contingent from 7/27/88).
Contractor/Supervisor (contingent from 7/27/88).
Contractor/Supervisor Refresher Course (contingent from 8/8/89).

(74)(a) *Training Provider:* Young Insulation Group of Amarillo, Inc.
Address: P.O. Box 5098, Amarillo, TX 79117, Contact: Dennis C. Clayton, Phone: (806) 372-4329.

(b) *Approved Courses:*
Abatement Worker (contingent from 7/27/88).
Abatement Worker Refresher Course (contingent from 7/27/88).

REGION VII -- Kansas City, KS

Regional Asbestos Coordinator: Wolfgang Brandner, EPA, Region VII, (ARTX), 726 Minnesota Ave., Kansas City, KS 66101. (913) 551-7381, (FTS) 551-7381.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region VII training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* AEROSTAT Environmental Engineering Corporation.
Address: Box 3096, Lawrence, KS 66046, Contact: Joseph Stimac, Phone: (913) 749-4747.

(b) *Approved Courses:*
Abatement Worker (full from 5/9/88).
Abatement Worker Refresher Course (contingent from 3/3/89).
Abatement Worker Refresher Course (full from 3/16/89).
Contractor/Supervisor (full from 5/9/88).
Inspector/Management Planner (contingent from 3/14/88).
Inspector/Management Planner (full from 1/23/89).
Inspector/Management Planner Refresher Course (contingent from 1/13/89).
Inspector/Management Planner Refresher Course (full from 2/14/89).

(2)(a) *Training Provider:* Abatement Project Training.
Address: P.O. Box 4372, Kansas City, KS 66104, Contact: Virginia Ireton, Phone: (913) 788-3440.

(b) *Approved Courses:*
Abatement Worker (contingent from 12/15/88).
Abatement Worker (full from 4/27/89).
Abatement Worker Refresher Course (contingent from 3/27/89).
Abatement Worker Refresher Course (full from 4/29/89).
Contractor/Supervisor (contingent from 3/23/89).
Contractor/Supervisor (full from 4/28/89).
Contractor/Supervisor Refresher Course (contingent from 6/21/89).
Contractor/Supervisor Refresher Course (full from 1/8/90).

(3)(a) *Training Provider:* Accredited Project Design Environmental Management.
Address: 1532 S.W. Clontarf, Topeka, KS 66611, Contact: Richard H. Pointer, Phone: (913) 256-2003.

(b) *Approved Courses:*
Abatement Worker (contingent from 11/13/89).
Abatement Worker (full from 2/8/90).
Abatement Worker Refresher Course (contingent from 2/21/90).
Contractor/Supervisor (contingent from 11/16/89).
Contractor/Supervisor (full from 2/8/90).
Contractor/Supervisor Refresher Course (contingent from 2/15/90).
Inspector/Management Planner (contingent from 11/16/89).
Inspector/Management Planner (full from 1/22/90).
Inspector/Management Planner Refresher Course (contingent from 2/16/90).

(4)(a) *Training Provider:* American Asbestos Training Center, Ltd.
Address: 121 East Grand, Monticello, IA 52310, Contact: Steve Intlekofer, Phone: (319) 465-5786.

(b) *Approved Courses:*
Abatement Worker (full from 6/27/88).
Abatement Worker Refresher Course (contingent from 6/23/89).
Abatement Worker Refresher Course (full from 6/26/89).
Contractor/Supervisor (full from 6/27/88).
Contractor/Supervisor Refresher Course (contingent from 6/23/89).
Contractor/Supervisor Refresher Course (full from 6/26/89).
Inspector/Management Planner (contingent from 10/26/88).
Inspector/Management Planner (full from 11/18/88).
Inspector/Management Planner Refresher Course (contingent from 11/10/89).
Inspector/Management Planner Refresher Course (full from 11/16/89).

(5)(a) *Training Provider:* Asbestos Consulting Testing (ACT).
Address: 14953 West 101st Ter., Lenexa, KS 66215, Contact: Jim Pickel, Phone: (913) 492-1337.

(b) *Approved Courses:*

Abatement Worker (full from 1/25/88).
Abatement Worker Refresher Course (full from 1/6/89).
Contractor/Supervisor (full from 1/25/88).
Contractor/Supervisor Refresher Course (full from 1/6/89).

(6)(a) *Training Provider:* Baird Scientific, Inc.

Address: 221 West Fourth St., P.O. Box 842, Carthage, MO 64836, Contact: Timmothy Redfern, Phone: (417) 358-5567.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/26/89).
Abatement Worker (full from 10/19/89).
Abatement Worker Refresher Course (contingent from 7/3/90).
Contractor/Supervisor (contingent from 9/26/89).
Contractor/Supervisor (full from 10/19/89).
Contractor/Supervisor Refresher Course (contingent from 7/31/90).

(7)(a) *Training Provider:* CHART Services, Ltd.

Address: 4725 Merle Hay Rd., Suite 214, Des Moines, IA 50322, Contact: Mary A. Finn, Phone: (515) 276-3642.

(b) *Approved Courses:*

Abatement Worker (full from 11/17/87).
Abatement Worker Refresher Course (full from 10/17/88).
Contractor/Supervisor (full from 11/17/87).
Contractor/Supervisor Refresher Course (full from 10/17/88).
Inspector/Management Planner (full from 2/22/88).
Inspector/Management Planner Refresher Course (full from 11/28/88).

(8)(a) *Training Provider:* Construction Industry Laborers' Training Institute for Eastern Missouri.

Address: Route 1, Box 79 H, High Hill, MO 63350, Contact: Jerald A. Pelker, Phone: (314) 585-2331.

(b) *Approved Courses:*

Abatement Worker (full from 1/19/88).
Abatement Worker Refresher Course (contingent from 5/18/89).
Abatement Worker Refresher Course (full from 5/31/89).

(9)(a) *Training Provider:* Construction Laborers Building Corp.

Address: 11000 North 72nd St., Omaha, NE 68122, Contact: Leonard Schaffer, Sr., Phone: (402) 572-1470.

(b) *Approved Course:*

Abatement Worker (full from 11/2/87).

(10)(a) *Training Provider:* Educational Innovations.

Address: 23 West 3rd St., Lee's Summit, MO 64063, Contact: JoAnn Onwiler, Phone: (816) 525-6911.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/11/89).
Abatement Worker (full from 5/2/89).
Abatement Worker Refresher Course (contingent from 3/29/89).
Abatement Worker Refresher Course (full from 8/2/89).
Contractor/Supervisor (contingent from 4/11/89).
Contractor/Supervisor (full from 5/2/89).
Contractor/Supervisor Refresher Course (contingent from 3/29/89).
Contractor/Supervisor Refresher Course (full from 8/2/89).
Project Designer Refresher Course (contingent from 6/21/89).
Project Designer Refresher Course (full from 7/31/89).

(11)(a) *Training Provider:* Enviro-Impact Inspections, Inc.

Address: 1515 North Warson, Suite 213, St. Louis, MO 63132, Contact: Denis Boles, Phone: no longer available.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/8/88 to 11/9/90 only).
Contractor/Supervisor (contingent from 3/8/88 to 11/9/90 only).

(12)(a) *Training Provider:* Environmental Salvage, Ltd.

Address: 4930 South 23rd St., Omaha, NE 68107, Contact: Lynn A. Kundtson, Phone: (402) 733-2595.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/12/89).
Abatement Worker (full from 2/16/89).
Abatement Worker Refresher Course (contingent from 6/22/89).
Abatement Worker Refresher Course (full from 8/1/89).
Contractor/Supervisor (contingent from 1/12/89).
Contractor/Supervisor (full from 2/16/89).
Contractor/Supervisor Refresher Course (contingent from 6/22/89).
Contractor/Supervisor Refresher Course (full from 8/1/89).

(13)(a) *Training Provider:* Environmental Technology, Inc. (ETI).

Address: 4315 Merriam Dr., Overland Park, KS 66203, Contact: Mike Bouska, Phone: (913) 236-5040.

(b) *Approved Courses:*

Abatement Worker (full from 2/29/88).
Abatement Worker Refresher Course (contingent from 4/26/89).
Abatement Worker Refresher Course (full from 7/18/89).

(14)(a) *Training Provider:* Flint Hills Area Vocational-Technical School.

Address: 3301 West 18th Ave., Emporia, KS 66801, Contact: Jim Krueger, Phone: (316) 342-6404.

(b) *Approved Course:*

Abatement Worker (full from 3/7/88).

(15)(a) *Training Provider:* General Services Administration (GSA)- Region 6 Safety & Environmental Management Div.

Address: 1500 East Bannister Rd., Kansas City, MO 64131-3088, Contact: Sharon Kersey, Phone: (816) 926-5318.

(b) *Approved Courses:*

Inspector/Management Planner (full from 5/16/88).
Inspector/Management Planner Refresher Course (contingent from 7/18/89).
Inspector/Management Planner Refresher Course (full from 8/29/89).

(16)(a) *Training Provider:* Greater Kansas City Laborers Training Fund.

Address: 8944 Kaw Dr., Kansas City, KS 66111, Contact: James D. Barnett, Phone: (913) 441-6100.

(b) *Approved Courses:*

Abatement Worker (full from 2/1/88).
Abatement Worker Refresher Course (contingent from 6/19/89).
Abatement Worker Refresher Course (full from 7/19/89).
Contractor/Supervisor (full from 5/2/88).
Contractor/Supervisor Refresher Course (contingent from 6/19/89).
Contractor/Supervisor Refresher Course (full from 7/20/89).

(17)(a) *Training Provider:* Hall-Kimbrell Environmental Services, Inc. a Division of Professional Service Industries.

Address: 4840 West 15th St., Lawrence, KS 66049, Contact: Margaret Maninger, Phone: (800) 346-2860.

(b) *Approved Courses:*

Abatement Worker (full from 8/17/87).
Abatement Worker Refresher Course (contingent from 9/19/88).
Abatement Worker Refresher Course (full from 10/19/88).
Contractor/Supervisor (full from 8/17/87).
Contractor/Supervisor Refresher Course (contingent from 9/19/88).
Contractor/Supervisor Refresher Course (full from 10/20/88).
Inspector/Management Planner (full from 8/17/87).
Inspector/Management Planner Refresher Course (full from 9/19/88).
Project Designer (full from 8/17/87).
Project Designer Refresher Course (contingent from 9/19/88).
Project Designer Refresher Course (full from 12/20/88).

(18)(a) *Training Provider:* Hazard Control Training Enterprises, Inc.

Address: P.O. Box 20594, Wichita, KS 67208, Contact: Karen Alexander, Phone: no longer available.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/19/88 to 12/7/88 only).
Contractor/Supervisor (contingent from 10/19/88 to 12/7/88 only).

(19)(a) *Training Provider:* Hazardous Materials Training & Research Institute.

Address: 306 West River Dr., Davenport, IA 52801-1221, Contact: Kirk Barkdoll, Phone: (319) 322-5015.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/6/89).
Abatement Worker (full from 4/13/89).
Contractor/Supervisor (contingent from 6/8/89).
Contractor/Supervisor (full from 7/21/89).

(20)(a) *Training Provider:* Insulators & Asbestos Workers Midwest States Health & Training Council.

Address: Rural Route 2, Wahoo, NE 68066, Contact: Ray Richmond, Phone: (402) 443-4810.

(b) *Approved Courses:*

Abatement Worker (full from 6/28/88).
Abatement Worker Refresher Course (contingent from 4/4/89).
Abatement Worker Refresher Course (full from 4/24/89).
Contractor/Supervisor (full from 6/28/88).
Contractor/Supervisor Refresher Course (contingent from 4/4/89).
Contractor/Supervisor Refresher Course (full from 4/24/89).

(21)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local No.1.

Address: 3325 Hallenberg Dr., St. Louis, MO 63044, Contact: James M. Hagen, Phone: (314) 291-7399.

(b) *Approved Courses:*

Abatement Worker (full from 6/6/88).
Abatement Worker Refresher Course (contingent from 6/28/89).
Abatement Worker Refresher Course (full from 6/30/89).
Contractor/Supervisor (full from 9/16/88).
Contractor/Supervisor Refresher Course (contingent from 8/14/89).
Contractor/Supervisor Refresher Course (full from 8/18/89).

(22)(a) *Training Provider:* Iowa Dept. of Education.

Address: Grimes State Office Bldg., Des Moines, IA 50319, Contact: C. Milt Wilson, Phone: (515) 281-4743.

(b) *Approved Course:*

Inspector/Management Planner (full from 4/4/88).

(23)(a) *Training Provider:* Iowa Laborers District Council Training Fund.

Address: 5806 Meredith Dr., Suite B, Des Moines, IA 50322, Contact: Jack G. Jones, Phone: (515) 270-6965.

(b) *Approved Courses:*

Abatement Worker (full from 2/22/88).
Abatement Worker Refresher Course (contingent from 11/10/89).
Abatement Worker Refresher Course (full from 11/14/89).
Contractor/Supervisor (contingent from 10/14/88).
Contractor/Supervisor (full from 12/6/89).

(24)(a) *Training Provider:* Kansas Construction Laborers' Training Trust Fund.

Address: 2430 Marlatt Ave., Manhattan, KS 66502, Contact: Fred Tipton, Phone: (913) 267-0140.

(b) *Approved Courses:*

Abatement Worker (full from 1/5/88).
Abatement Worker Refresher Course (contingent from 6/19/89).
Abatement Worker Refresher Course (full from 7/19/89).
Contractor/Supervisor (full from 5/2/88).
Contractor/Supervisor Refresher Course (contingent from 6/19/89).
Contractor/Supervisor Refresher Course (full from 7/20/89).

(25)(a) *Training Provider:* Kansas State University.

Address: Division of Facilities Management, Dykstra Hall, Manhattan, KS 66506, Contact: Robert D. Williams, Phone: (913) 532-6369.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/7/89).
Abatement Worker (full from 2/8/90).
Abatement Worker Refresher Course (contingent from 1/3/90).
Abatement Worker Refresher Course (full from 2/8/90).

(26)(a) *Training Provider:* Living Word College.

Address: 2750 McKelvey Rd., St. Louis, MO 63043, Contact: Donald C. Femmer, Phone: (314) 291-2749.

(b) *Approved Course:*

Inspector/Management Planner (**Approval Revoked** 5/6/88).

(27)(a) *Training Provider:* MI-TON, Inc.

Address: 205 W. Walnut, Springfield, MO 65836, Contact: Barry Mills, Phone: (417) 831-4647.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/14/89).
Abatement Worker (full from 5/15/89).
Abatement Worker Refresher Course (contingent from 4/16/90).
Abatement Worker Refresher Course (full from 5/18/90).
Contractor/Supervisor (contingent from 4/14/89).
Contractor/Supervisor (full from 5/15/89).
Contractor/Supervisor Refresher Course (contingent from 4/17/90).
Contractor/Supervisor Refresher Course (full from 5/11/90).
Inspector/Management Planner (full from 3/14/88).
Inspector/Management Planner Refresher Course (contingent from 3/30/89).
Inspector/Management Planner Refresher Course (full from 4/3/89).

(28)(a) *Training Provider:* Maple Woods Community College.

Address: 10771 Ambassador Dr., Kansas City, MO 64153, Contact: James C. Lauer, Phone: (816) 891-6500.

(b) *Approved Courses:*

Abatement Worker (full from 2/1/88).
Abatement Worker Refresher Course (full from 1/13/89).
Contractor/Supervisor (full from 3/28/88).
Contractor/Supervisor Refresher Course (full from 1/13/89).
Inspector/Management Planner (contingent from 4/20/88).
Inspector/Management Planner (full from 5/2/88).
Inspector/Management Planner Refresher Course (contingent from 7/27/89).
Inspector/Management Planner Refresher Course (full from 7/28/89).

(29)(a) *Training Provider:* Mayhew Environmental Training Associates, Inc., (META).

Address: P.O. Box 1961, Lawrence, KS 66044, Contact: Brad Mayhew or Teri Herberger, Phone: (800) 444-6382.

(b) *Approved Courses:*

Abatement Worker (full from 10/20/87).
Abatement Worker Refresher Course (full from 11/14/88).
Contractor/Supervisor (full from 10/20/87).
Contractor/Supervisor Refresher Course (full from 11/14/88).
Inspector/Management Planner (full from 8/8/88).
Inspector/Management Planner Refresher Course (full from 1/30/89).

(30)(a) *Training Provider:* Midwest Environmental Testing & Training, Inc.

Address: 635 Southwest 2nd St., Box 1029, Lee's Summit, MO 64063, Contact: Steve Minshall, Phone: (816) 525-6681.

(b) *Approved Courses:*

Abatement Worker (full from 5/9/88 to 6/5/89 only).
Abatement Worker Refresher Course (contingent from 4/28/89 to 6/5/89 only).
Contractor/Supervisor (full from 5/9/88 to 6/5/89 only).
Contractor/Supervisor Refresher Course (contingent from 4/28/89 to 6/5/89 only).

(31)(a) *Training Provider:* National Asbestos Training Center, University of Kansas.

Address: 6600 College Blvd., Suite 315, Overland Park, KS 66211, Contact: Karen Wilson, Phone: (913) 491-0181.

(b) *Approved Courses:*

Abatement Worker (full from 7/27/87).
Abatement Worker Refresher Course (contingent from 10/5/88).
Abatement Worker Refresher Course (full from 9/26/89).
Contractor/Supervisor (interim from 6/1/85 to 7/26/87).
Contractor/Supervisor (full from 7/27/87).
Contractor/Supervisor Refresher Course (contingent from 10/5/88).
Contractor/Supervisor Refresher Course (full from 10/11/88).
Inspector/Management Planner (full from 10/26/87).
Inspector/Management Planner Refresher Course (contingent from 10/5/88).
Inspector/Management Planner Refresher Course (full from 10/10/88).

(32)(a) *Training Provider:* Occu-Tec, Inc.

Address: 6501 East Commerce Ave., Suite 208, Kansas City, MO 64120, Contact: Duncan Heydon, Phone: (816) 231-5580.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/29/90).
Abatement Worker (full from 7/26/90).
Abatement Worker Refresher Course (contingent from 1/29/90).
Abatement Worker Refresher Course (full from 4/2/90).
Contractor/Supervisor (contingent from 1/29/90).
Contractor/Supervisor (full from 7/26/90).
Contractor/Supervisor Refresher Course (contingent from 1/29/90).
Contractor/Supervisor Refresher Course (full from 4/2/90).
Inspector/Management Planner (contingent from 1/29/90).
Inspector/Management Planner (full from 12/12/90).
Inspector/Management Planner Refresher Course (contingent from 1/29/90).
Inspector/Management Planner Refresher Course (full from 4/2/90).

(33)(a) *Training Provider:* PS&H Inc.

Address: 1810 Craig Rd., Suite 114, St. Louis, MO 63146, Contact: Carol E. Hoag, Phone: (314) 275-7733.

(b) *Approved Courses:*

Abatement Worker (full from 11/28/88).
Abatement Worker Refresher Course (contingent from 9/14/89).
Abatement Worker Refresher Course (full from 11/2/89).
Contractor/Supervisor (full from 11/28/88).
Contractor/Supervisor Refresher Course (contingent from 9/14/89).
Contractor/Supervisor Refresher Course (full from 11/2/89).
Inspector/Management Planner (full from 6/23/88).
Inspector/Management Planner Refresher Course (contingent from 1/19/89).
Inspector/Management Planner Refresher Course (full from 3/2/89).

(34)(a) *Training Provider:* Performance Abatement Services, Inc.

Address: 14801 West 99th St., P.O. Box 19323, Lenexa, KS 66215, Contact: Tony Chiaverini, Phone: (913) 888-2423.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 7/6/89).
Contractor/Supervisor (full from 7/27/89).

(35)(a) *Training Provider:* Ramsey - Schilling Consulting Group, Inc.

Address: 503 Main, Belton, MO 64012, Contact: George McDowell, Phone: (816) 331-0002.

(b) *Approved Course:*

Inspector (contingent from 1/30/90).

(36)(a) *Training Provider:* Roth Asbestos Consultants, Inc.

Address: 1900 West 47th Pl., Westwood, KS 66205, Contact: Donald J. Welsh, Phone: (913) 831-4795.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/9/89).
Abatement Worker (full from 3/13/89).
Abatement Worker Refresher Course (contingent from 6/15/89).
Abatement Worker Refresher Course (full from 7/24/89).
Contractor/Supervisor (contingent from 5/16/89).
Contractor/Supervisor (full from 7/20/89).
Contractor/Supervisor Refresher Course (contingent from 5/18/89).
Contractor/Supervisor Refresher Course (full from 7/24/89).
Inspector/Management Planner Refresher Course (contingent from 1/19/89).
Inspector/Management Planner Refresher Course (full from 1/23/89).

(37)(a) *Training Provider:* Ryckman's Emergency Action & Consulting Team (REACT).

Address: 2208 Welsch Industrial Ct., St. Louis, MO 63146, Contact: Nicolaus P. Neuman, Phone: (800) 325-1398.

(b) *Approved Courses:*

Abatement Worker (full from 7/26/88).
Abatement Worker Refresher Course (contingent from 4/26/89).
Abatement Worker Refresher Course (full from 8/3/89).
Contractor/Supervisor (full from 7/26/88).
Contractor/Supervisor Refresher Course (contingent from 4/26/89).
Contractor/Supervisor Refresher Course (full from 8/4/89).

(38)(a) *Training Provider:* University of Missouri-Columbia Environmental Health and Safety.

Address: Research Park Development Bldg., Columbia, MO 65211, Contact: Brent S. Mattox, Phone: (314) 882-7018.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 8/8/90).
Contractor/Supervisor (full from 8/23/90).

REGION VIII -- Denver, CO

Regional Asbestos Coordinator: David Combs, (8AT-TS), EPA, Region VIII, 1 Denver Place, 999-18th St., Suite 500, Denver, CO 80202-2413. (303) 293-1442, (FTS) 330-1442.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region VIII training courses and contact points for each, are as follows.

(1)(a) *Training Provider:* Acme Asbestos Removal.

Address: 9101 Pearl St., Suite 307, Thornton, CO 80229, Contact: Eugene Aragon, Phone: (303) 450-5026.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/26/89).
Abatement Worker (full from 11/22/89).
Abatement Worker Refresher Course (contingent from 5/31/89).
Contractor/Supervisor (contingent from 7/26/89).
Contractor/Supervisor (full from 11/22/89).

(2)(a) *Training Provider:* Asbestos Training & Supply.

Address: 504 Saddle Dr., Cheyenne, WY 82009, Contact: F. Gerald Blackwell, Phone: (307) 634-6858.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/2/89).
Abatement Worker (full from 5/4/90).

(3)(a) *Training Provider:* Chen-Northern, Inc.

Address: P.O. Box 30615, Billings, MT 59107, Contact: Kathleen A. Smit, Phone: (406) 248-9161.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/1/87).
Abatement Worker (full from 1/11/90).
Abatement Worker Refresher Course (contingent from 2/16/89).
Abatement Worker Refresher Course (full from 11/8/90).
Contractor/Supervisor (contingent from 10/31/88).
Contractor/Supervisor (full from 1/11/90).
Contractor/Supervisor Refresher Course (contingent from 5/31/89).
Contractor/Supervisor Refresher Course (full from 11/9/90).

(4)(a) *Training Provider:* Colorado Carpenters Statewide Joint Apprenticeship Educational & Training Committee.

Address: 4290 Holly St., Denver, CO 80216, Contact: Manuel Rodriquez, Jr., Phone: (303) 393-6060.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/1/88).
Abatement Worker (full from 12/19/88).

(5)(a) *Training Provider:* Colorado Laborers' & Contractors' Education & Training Fund.

Address: 10505 Havana, Brighton, CO 80601, Contact: James Zancanaro, Phone: (303) 287-3116.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/16/89).
Abatement Worker (full from 2/16/89).

(6)(a) *Training Provider:* Colorado State University Dept. of Industrial Sciences.

Address: Fort Collins, CO 80523, Contact: Birgit Wolff, Phone: (303) 491-7240.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/23/88).
Abatement Worker (full from 9/22/90).
Abatement Worker Refresher Course (contingent from 12/9/88).
Abatement Worker Refresher Course (full from 4/6/90).
Contractor/Supervisor (contingent from 12/29/88).
Contractor/Supervisor (full from 9/22/90).
Contractor/Supervisor Refresher Course (contingent from 12/9/88).
Contractor/Supervisor Refresher Course (full from 4/6/90).
Inspector/Management Planner (contingent from 3/14/88).
Inspector/Management Planner (full from 5/23/88).
Inspector/Management Planner Refresher Course (contingent from 12/9/88).
Inspector/Management Planner Refresher Course (full from 1/17/89).

(7)(a) *Training Provider:* Colorado Training Institute.

Address: 10255 E. 25th Ave., Suite 13, Aurura, CO 80010, Contact: Carlos M. Guerra, Phone: (303) 367-8986.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/31/88).
Abatement Worker (full from 9/19/90).
Abatement Worker Refresher Course (contingent from 12/29/88).
Contractor/Supervisor (contingent from 10/31/88).
Contractor/Supervisor (full from 9/20/90).
Contractor/Supervisor Refresher Course (contingent from 12/29/88).

(8)(a) *Training Provider:* Energy Insulation, Inc. (EII).

Address: P.O. Box 1996, Casper, WY 82602, Contact: David K. Fox, Phone: (307) 473-1247.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/18/88 to 6/1/90 **only**).
Abatement Worker (full from 6/22/88 to 6/1/90 **only**).

(9)(a) *Training Provider:* Engineering Extension College of Engineering South Dakota State University.

Address: Box 2218, Brookings, SD 57007-0597, Contact: James Ceglian, Phone: (605) 688-4101.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 5/18/88).
Inspector/Management Planner (contingent from 5/18/88).

(10)(a) *Training Provider:* Envir-o-Tech.

Address: 300 Moore Ln., Billings, MT 59102, Contact: Leonard Cranford, Phone: (406) 252-7538.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/13/88).
Abatement Worker (full from 7/6/88).

(11)(a) *Training Provider:* Front Range Community College.

Address: 3645 West 112 Ave., Westminster, CO 80030, Contact: Gwen Burton, Phone: (303) 466-8811.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/13/88).
Abatement Worker (full from 4/7/89).
Abatement Worker Refresher Course (contingent from 2/28/89).
Contractor/Supervisor (contingent from 2/28/89).
Contractor/Supervisor (full from 4/7/89).
Contractor/Supervisor Refresher Course (contingent from 2/28/89).
Contractor/Supervisor Refresher Course (full from 7/27/90).
Inspector/Management Planner (contingent from 2/28/89).
Inspector/Management Planner (full from 1/26/90).
Inspector/Management Planner Refresher Course (contingent from 2/28/89).

(12)(a) *Training Provider:* HWS Technologies, Inc.

Address: 9101 East Kenyon Ave., Suite 1600, Denver, CO 80237, Contact: William C. Oleskevich, Phone: (303) 771-6868.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/28/89).
Abatement Worker (full from 4/7/89).
Abatement Worker Refresher Course (contingent from 2/28/89).
Abatement Worker Refresher Course (full from 6/29/89).
Contractor/Supervisor (contingent from 2/28/89).
Contractor/Supervisor (full from 4/7/89).
Contractor/Supervisor Refresher Course (contingent from 2/28/89).
Contractor/Supervisor Refresher Course (full from 6/29/89).
Inspector/Management Planner (contingent from 2/28/89).
Inspector/Management Planner Refresher Course (contingent from 2/28/89).
Inspector/Management Planner Refresher Course (full from 6/29/89).

(13)(a) *Training Provider:* Hager Laboratories, Inc.

Address: 5930 McIntire St., P.O. Box 4012, Golden, CO 80403, Contact: Charles Metzger & D. Robinson, Phone: (303) 278-3400.

(b) *Approved Courses:*

Abatement Worker (full from 3/28/88).
Abatement Worker Refresher Course (contingent from 10/7/88).
Abatement Worker Refresher Course (full from 4/26/89).

Contractor/Supervisor (full from 3/28/88).
Contractor/Supervisor Refresher Course (contingent from 10/7/88).
Contractor/Supervisor Refresher Course (full from 1/25/89).
Inspector/Management Planner (contingent from 4/20/88).
Inspector/Management Planner (full from 5/2/88).
Inspector/Management Planner Refresher Course (contingent from 10/7/88).
Inspector/Management Planner Refresher Course (full from 12/8/89).

(14)(a) *Training Provider:* Industrial Health, Inc. (IHI).

Address: 640 East Wilmington Ave., Salt Lake City, UT 84106, Contact: Donald E. Marano, Phone: (801) 466-2223.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/4/89).
Abatement Worker (full from 11/13/89).
Abatement Worker Refresher Course (contingent from 6/15/89).
Contractor/Supervisor (contingent from 4/22/88).
Contractor/Supervisor (full from 11/13/89).
Contractor/Supervisor Refresher Course (contingent from 4/24/89).
Contractor/Supervisor Refresher Course (full from 11/2/90).
Inspector/Management Planner (contingent from 2/28/89).
Inspector/Management Planner (full from 4/17/89).
Inspector/Management Planner Refresher Course (contingent from 12/29/88).
Inspector/Management Planner Refresher Course (full from 1/6/89).
Project Designer Refresher Course (contingent from 4/24/89).

(15)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 28.

Address: 360 Acoma St., Suite 216, Denver, CO 80223, Contact: Chet Graham or Pat Pfeifer, Phone: (303) 778-8602.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/28/89).
Abatement Worker (full from 4/28/89).
Abatement Worker Refresher Course (full from 7/21/89).

(16)(a) *Training Provider:* Laborers AGC Training Program for Montana.

Address: 3100 Horseshoe Bend Rd., Helena, MT 59601, Contact: Daniel F. Holland, Phone: (406) 442-9964.

(b) *Approved Course:*

Abatement Worker (contingent from 9/19/88).

(17)(a) *Training Provider:* Major Environmental & Training Services, Inc.

Address: 100 Garfield St., Suite 100, Denver, CO 80206, Contact: Tom Major, Sr., Phone: (303) 322-9490.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/28/88).
Abatement Worker (full from 9/15/88).
Abatement Worker Refresher Course (contingent from 1/18/89).
Contractor/Supervisor (contingent from 4/14/88).
Contractor/Supervisor (full from 9/5/88).
Contractor/Supervisor Refresher Course (contingent from 1/18/89).
Inspector/Management Planner (contingent from 1/2/88).
Inspector/Management Planner (full from 3/27/89).
Inspector/Management Planner Refresher Course (contingent from 1/18/89).
Inspector/Management Planner Refresher Course (full from 1/12/90).
Project Designer (contingent from 1/28/88).
Project Designer Refresher Course (contingent from 1/18/89).

(18)(a) *Training Provider:* Midwest Asbestos Consultants, Inc. (MAC).

Address: 219 23rd St. North, Box 1708, Fargo, ND 58107, Contact: Jerry Day, Phone: (701) 280-2286.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/11/88).
Abatement Worker (full from 5/23/89).
Abatement Worker Refresher Course (contingent from 7/31/89).
Abatement Worker Refresher Course (full from 8/24/89).

(19)(a) *Training Provider:* Misers Inspection & Training, Inc.

Address: 1600 South Cherokee St., Denver, CO 80223, Contact: Michael E. DiRito, Phone: (303) 761-0367.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/17/88).
Abatement Worker (full from 7/5/88).
Abatement Worker Refresher Course (contingent from 11/14/88).
Abatement Worker Refresher Course (full from 1/27/89).
Contractor/Supervisor (contingent from 6/17/88).
Contractor/Supervisor (full from 7/5/88).
Contractor/Supervisor Refresher Course (contingent from 11/14/88).
Contractor/Supervisor Refresher Course (full from 1/27/89).

(20)(a) *Training Provider:* NATEC International, Inc.

Address: 2761 West Oxford Ave., No. 7, Englewood, CO 80110, Contact: Lester Ablin, Phone: (303) 781-0422.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/15/88 to 6/1/90 **only**).
Inspector/Management Planner (contingent from 6/2/89 to 6/1/90 **only**).

(21)(a) *Training Provider:* National Education Program for Asbestos (NEPA).

Address: 2863 West 8750 S., West Jordan, UT 84088, Contact: Mark A. Kirk, Phone: (801) 565-1400.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/6/89).
Abatement Worker (full from 6/22/89).
Abatement Worker Refresher Course (contingent from 5/22/89).
Contractor/Supervisor (contingent from 5/22/89).
Contractor/Supervisor (full from 6/22/89).
Contractor/Supervisor Refresher Course (full from 7/3/90).

(22)(a) *Training Provider:* Power Master, Inc.

Address: 13205 Minuteman Drive, Draper, UT 84020, Contact: Brian Welty, Phone: (801) 571-9321.

(b) *Approved Course:*

Abatement Worker (contingent from 6/13/88 to 6/22/90 **only**).

(23)(a) *Training Provider:* Precision Safety & Services, Inc.

Address: 1045 W. Garden of Gods Rd., Unit T, Colorado Springs, CO 80907, Contact: James R. Mapes, Jr., Phone: (719) 593-8596.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/11/88).
Abatement Worker (full from 11/2/88).

(24)(a) *Training Provider:* R. S. Christiansen Asbestos Consultant.

Address: 4980 Holladay Blvd., Salt Lake City, UT 84117, Contact: R. S. Christiansen, Phone: (801) 277-2323.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/29/88).
Abatement Worker (full from 12/7/88).

(25)(a) *Training Provider:* Survey Management & Design (SMD).

Address: RR 2, Box 85-B, Fargo, ND 58102, Contact: Peter Mehl, Phone: (701) 234-9556.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/2/89).

Contractor/Supervisor (contingent from 3/2/89).
Contractor/Supervisor (full from 5/2/89).
Inspector/Management Planner (contingent from 9/14/89).
Inspector/Management Planner (full from 10/15/89).

(26)(a) *Training Provider:* The Environmental Training Center.
Address: 2761 W. Oxford Ave., No. 7, Englewood, CO 80110, Contact: Les Ablin, Phone: (303) 781-0422.

(b) *Approved Courses:*
Abatement Worker (contingent from 9/21/89).
Abatement Worker (full from 4/27/90).
Contractor/Supervisor (contingent from 9/21/89).
Contractor/Supervisor (full from 4/27/90).

(27)(a) *Training Provider:* University of Utah, Rocky Mountain Center for Occupational & Environmental Health.
Address: Dept. of Family & Preventive Medicine, Building 512, Salt Lake City, UT 84112, Contact: Jeffery S. Lee, Phone: (801) 581-5710.

(b) *Approved Courses:*
Abatement Worker (contingent from 9/27/88).
Abatement Worker (full from 9/27/88).
Contractor/Supervisor (contingent from 6/1/87).
Contractor/Supervisor (full from 6/1/87).
Contractor/Supervisor Refresher Course (contingent from 6/7/88).
Contractor/Supervisor Refresher Course (full from 11/13/88).
Inspector/Management Planner (contingent from 12/23/87).
Inspector/Management Planner (full from 2/8/88).
Inspector/Management Planner Refresher Course (contingent from 12/9/88).
Inspector/Management Planner Refresher Course (full from 12/14/88).

REGION IX -- San Francisco, CA

Regional Asbestos Coordinator: Jo Ann Semones, (A-4-4), EPA, Region IX, 75 Hawthorne St., San Francisco, CA 94105. (415) 556-5406, (FTS) 556-5978.

List of Asbestos Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region IX training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Ahearn & Associates, Inc.
Address: 4015 44th St., Phoenix, AZ 85018, Contact: Robert L Hutzel, Phone: (602) 840-9446.

(b) *Approved Courses:*
Abatement Worker Refresher Course (contingent from 10/18/89).
Contractor/Supervisor (contingent from 10/18/89).
Contractor/Supervisor Refresher Course (contingent from 10/18/89).
Inspector/Management Planner (contingent from 10/18/89).
Inspector/Management Planner Refresher Course (contingent from 10/18/89).

(2)(a) *Training Provider:* Arizona Carpenters Joint Apprenticeship & Training Committee.
Address: 2625 W. Holly, Phoenix, AZ 85009, Contact: Thomas E. Quine, Phone: (602) 272-6547.

(b) *Approved Course:*
Contractor/Supervisor (contingent from 10/18/89).

(3)(a) *Training Provider:* Arizona Laborers' Joint Training Center.
Address: P.O. Box 565, Chino Valley, AZ 86323, Contact: Bill Hadley, Phone: (602) 636-2532.

(b) *Approved Course:*
Abatement Worker (contingent from 10/18/89).

(4)(a) *Training Provider:* Asbestos C.T.I.
Address: P.O. Box 228, Mokelumne Hill, CA 95245, Contact: Ed Leonard, Phone: (209) 286-1472.

(b) *Approved Courses:*
Abatement Worker (contingent from 10/31/89).
Abatement Worker Refresher Course (contingent from 10/31/89).
Contractor/Supervisor (contingent from 10/31/88).
Contractor/Supervisor Refresher Course (contingent from 10/31/89).
Inspector (contingent from 3/21/89).
Inspector Refresher Course (contingent from 10/31/89).

(5)(a) *Training Provider:* Asbestos Training Institute.
Address: 210 S. La Fayette Park Pl., Suite 205, Los Angeles, CA 90057, Contact: Kayode Akinrele, Phone: (213) 252-0166.

(b) *Approved Courses:*
Abatement Worker (contingent from 10/18/89).
Contractor/Supervisor (contingent from 10/18/89).

(6)(a) *Training Provider:* California State University - Sacramento.
Address: 650 University Ave., Suite 101A, Sacramento, CA 95825, Contact: Jackie Branch, Phone: (916) 923-0282.

(b) *Approved Courses:*
Abatement Worker (contingent from 10/18/89).
Abatement Worker Refresher Course (contingent from 12/7/89).
Contractor/Supervisor (contingent from 10/18/89).
Contractor/Supervisor Refresher Course (contingent from 12/7/89).

(7)(a) *Training Provider:* Carpenters No. 46 Northern California Counties J.A.T.C. & T.B.
Address: 2350 Santa Rita Rd., Pleasanton, CA 94566-4190, Contact: Hugh Johnson, Phone: (415) 462-9640.

(b) *Approved Courses:*
Abatement Worker (contingent from 10/31/89).
Abatement Worker Refresher Course (contingent from 12/7/89).
Contractor/Supervisor (contingent from 12/1/88).
Contractor/Supervisor Refresher Course (contingent from 12/7/89).

(8)(a) *Training Provider:* Center for Accelerated Learning.
Address: P.O. Box 6327, Vacaville, CA 95696-6327, Contact: David Esparza, Phone: (707) 446-7996.

(b) *Approved Courses:*
Abatement Worker (contingent from 6/1/88).
Abatement Worker Refresher Course (contingent from 12/15/88).
Contractor/Supervisor (contingent from 6/1/88).
Contractor/Supervisor Refresher Course (contingent from 12/15/88).
Inspector/Management Planner (contingent from 6/30/88).
Inspector/Management Planner Refresher Course (contingent from 12/7/89).
Project Designer (contingent from 10/18/89).
Project Designer Refresher Course (contingent from 10/18/89).

(9)(a) *Training Provider:* DWC Consulting Co., Inc.
Address: 1250 Pine St., Suite 307, Walnut Creek, CA 94596, Contact: Dan Weathers, Phone: (415) 933-9066.

(b) *Approved Courses:*
Abatement Worker (contingent from 4/3/89).
Abatement Worker Refresher Course (contingent from 10/18/89).
Contractor/Supervisor (contingent from 4/3/89).
Contractor/Supervisor Refresher Course (contingent from 10/18/89).
Inspector/Management Planner (contingent from 4/3/89).

Inspector/Management Planner Refresher Course (contingent from 10/18/89).

(10)(a) *Training Provider:* Dan Napier & Associates.

Address: 15342 Hawthorne Blvd., Suite 207, P.O. Box 1540, Lawndale, CA 90260-6440, Contact: Dan Napier, Phone: (213) 644-1924.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/18/88).
Abatement Worker Refresher Course (contingent from 1/18/89).
Contractor/Supervisor (contingent from 3/27/89).
Contractor/Supervisor Refresher Course (contingent from 1/18/89).
Inspector/Management Planner (contingent from 4/3/89).
Inspector/Management Planner Refresher Course (contingent from 3/30/89).
Project Designer Refresher Course (contingent from 3/30/89).

(11)(a) *Training Provider:* Design for Health.

Address: 1516 W. Redwood St., Suite 104, San Diego, CA 92101, Contact: Virginia Shefa, Phone: (619) 291-1777.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/30/89).
Abatement Worker Refresher Course (contingent from 12/6/89).
Contractor/Supervisor (contingent from 10/18/89).
Contractor/Supervisor Refresher Course (contingent from 12/6/89).
Inspector/Management Planner (contingent from 11/30/89).

(12)(a) *Training Provider:* Eagle Environmental.

Address: 8840-A Elder Creek Rd., Sacramento, CA 95828, Contact: Larry West, Phone: (916) 381-5448.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/18/89).
Abatement Worker Refresher Course (contingent from 10/18/89).
Contractor/Supervisor (contingent from 10/18/89).
Contractor/Supervisor Refresher Course (contingent from 10/18/89).
Inspector/Management Planner (contingent from 10/18/89).
Inspector/Management Planner Refresher Course (contingent from 10/18/89).
Project Designer (contingent from 10/18/89).
Project Designer Refresher Course (contingent from 10/18/89).

(13)(a) *Training Provider:* EnviroMD, Inc.

Address: 3443 East Fort Lowell Rd., Tucson, AZ 85716, Contact: Lee Allen, Phone: (602) 881-1000.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/15/89).
Contractor/Supervisor (contingent from 1/17/89).
Contractor/Supervisor Refresher Course (contingent from 10/18/89).
Inspector/Management Planner (contingent from 11/14/88).
Inspector/Management Planner Refresher Course (contingent from 10/18/89).

(14)(a) *Training Provider:* Environmental Control Industries.

Address: 2700 Teagarden St., San Leandro, CA 94577, Contact: Carlos Aleman, Phone: (415) 655-5855.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/1/88).
Abatement Worker Refresher Course (contingent from 10/18/89).
Contractor/Supervisor (contingent from 10/31/89).
Contractor/Supervisor Refresher Course (contingent from 10/18/89).

(15)(a) *Training Provider:* Environmental Sciences, Inc.

Address: 105 E. Speedway, Tucson, AZ 85705, Contact: Paula Keyes, Phone: (602) 792-0097.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 9/29/87).
Inspector/Management Planner (full from 10/5/87).
Inspector/Management Planner Refresher Course (contingent from 11/14/88).

(16)(a) *Training Provider:* Environmental Service & Technology, Inc.

Address: 3445 32nd St., San Diego, CA 92104, Contact: Mary Lacey, Phone: (800) 633-0373.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/18/89).
Abatement Worker Refresher Course (contingent from 12/6/89).
Contractor/Supervisor (contingent from 10/18/89).
Contractor/Supervisor Refresher Course (contingent from 12/6/89).
Inspector/Management Planner (contingent from 10/18/89).
Inspector/Management Planner Refresher Course (contingent from 10/18/89).

(17)(a) *Training Provider:* Excel Environmental, Inc.

Address: 739 Allston Way, Berkeley, CA 94710, Contact: Dave Stover, Phone: (415) 548-4300.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/28/87).
Abatement Worker Refresher Course (contingent from 12/1/88).
Contractor/Supervisor (contingent from 6/1/88).
Contractor/Supervisor Refresher Course (contingent from 12/1/88).

(18)(a) *Training Provider:* Hawaii Laborers Training School.

Address: P.O. Box 457, Aiea, HI 96701, Contact: Norman Jimeno, Phone: (808) 488-6161.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/27/88).
Abatement Worker Refresher Course (contingent from 10/18/89).

(19)(a) *Training Provider:* Herring & Herring Enterprises.

Address: No. 9 Grits Court, Sacramento, CA 95823, Contact: Leslie Herring, Phone: (916) 421-6260.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/2/90).
Abatement Worker Refresher Course (contingent from 10/18/89).
Contractor/Supervisor (contingent from 1/2/90).
Contractor/Supervisor Refresher Course (contingent from 10/18/89).

(20)(a) *Training Provider:* INFOTOX.

Address: 8531 Mission Blvd, Suite 24, Riverside, CA 92509, Contact: Jim Maclam, Phone: (714) 685-5053.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/18/89).
Abatement Worker Refresher Course (contingent from 10/18/89).
Contractor/Supervisor (contingent from 10/18/89).
Contractor/Supervisor Refresher Course (contingent from 10/18/89).

(21)(a) *Training Provider:* Insulators & Asbestos Industry of Northern California & Local Union No. 16 Asbestos Training Fund.

Address: 2033 Clement Ave., Building 31, Room 112, Alameda, CA 94501, Contact: Hans D. Siebert, Phone: (415) 865-2292.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/1/88).
Contractor/Supervisor (contingent from 10/31/89).

(22)(a) *Training Provider:* International Technology Corp.

Address: 17605 Fabrica Way, Cerritos, CA 90701, Contact: Sean Smith, Phone: (213) 921-9831.

(b) *Approved Courses:*
Abatement Worker (contingent from 12/24/87).
Abatement Worker Refresher Course (contingent from 3/29/89).
Contractor/Supervisor (contingent from 4/15/88).
Contractor/Supervisor Refresher Course (contingent from 3/29/89).

(23)(a) *Training Provider:* Joint Apprenticeship Trust Asbestos Workers Local 5.
Address: 520 So. La Fayette Park Pl., Suite 300, Los Angeles, CA 90057, Contact: Tom L. Gutierrez, Phone: (213) 383-8010.

(b) *Approved Courses:*
Abatement Worker (contingent from 6/1/88).
Abatement Worker Refresher Course (contingent from 10/18/89).
Contractor/Supervisor (contingent from 1/26/89).
Contractor/Supervisor Refresher Course (contingent from 10/18/89).

(24)(a) *Training Provider:* KELLCO Training Institute.
Address: 44804 Osgood Rd., Fremont, CA 94539, Contact: Charles W. Kellogg, Phone: (415) 651-7401.

(b) *Approved Courses:*
Abatement Worker (contingent from 6/1/88).
Contractor/Supervisor (contingent from 7/20/88).
Contractor/Supervisor Refresher Course (contingent from 10/31/88).
Inspector/Management Planner (contingent from 3/21/89).
Inspector/Management Planner Refresher Course (contingent from 3/16/89).

(25)(a) *Training Provider:* Laborers Training & Retraining Trust Fund for Northern California.
Address: 21321 San Ramon Valley Blvd., San Ramon, CA 94583, Contact: Monte R. Strother, Phone: (415) 828-2513.

(b) *Approved Courses:*
Abatement Worker (contingent from 6/13/88).
Abatement Worker Refresher Course (contingent from 12/15/88).

(26)(a) *Training Provider:* Laborers Training & Retraining Trust Fund for Southern California.
Address: P.O. Box 76, Anza, CA 92306-0076, Contact: Don Sanders, Phone: (714) 763-4341.

(b) *Approved Courses:*
Abatement Worker (contingent from 6/30/88).
Abatement Worker Refresher Course (contingent from 12/6/89).

(27)(a) *Training Provider:* Lehr Training Institute, Inc.
Address: 4125 East La Palma Ave. Suite 300, Anaheim, CA 92807, Contact: Susan Patnode, Phone: (714) 572-0110.

(b) *Approved Courses:*
Abatement Worker (contingent from 2/16/88).
Abatement Worker Refresher Course (contingent from 2/21/89).
Contractor/Supervisor (contingent from 2/16/88).
Contractor/Supervisor Refresher Course (contingent from 2/21/89).
Inspector/Management Planner (contingent from 10/31/88).
Inspector/Management Planner Refresher Course (contingent from 2/21/89).

(28)(a) *Training Provider:* Los Angeles District Council of Carpenters and Vicinity.
Address: 4665 Mercury St., Suite 203, San Diego, CA 92111, Contact: Otis Kunz, Phone: (619) 495-1850.

(b) *Approved Courses:*
Abatement Worker (contingent from 3/30/89).
Contractor/Supervisor (contingent from 10/31/88).

(29)(a) *Training Provider:* National Asbestos Technology Education Center (NATEC).
Address: 11552 Knott St., Suite 8, Garden Grove, CA 92641, Contact: Rodger D. Sandlin, Phone: (714) 894-7577.

(b) *Approved Courses:*
Abatement Worker (contingent from 12/30/87).
Abatement Worker Refresher Course (contingent from 11/8/88).
Contractor/Supervisor (contingent from 12/30/87).
Contractor/Supervisor Refresher Course (contingent from 11/8/88).

(30)(a) *Training Provider:* National Institute for Asbestos & Hazardous Waste Training.
Address: 1019 West Manchester Blvd., Inglewood, CA 90301, Contact: Jim McFarland, Phone: (213) 645-4516.

(b) *Approved Courses:*
Abatement Worker (full from 12/24/87).
Abatement Worker Refresher Course (contingent from 10/19/88).
Contractor/Supervisor (full from 12/24/87).
Contractor/Supervisor Refresher Course (contingent from 10/19/88).
Inspector/Management Planner (contingent from 6/30/88).
Inspector/Management Planner Refresher Course (contingent from 11/4/88).

(31)(a) *Training Provider:* Naval Civil Engineering Laboratory.
Address: Code L-15, Port Hueneme, CA 93043-5003, Contact: Susan C. Tianen, Phone: (805) 982-1136.

(b) *Approved Courses:*
Abatement Worker (contingent from 10/31/89).
Abatement Worker Refresher Course (contingent from 10/18/89).
Contractor/Supervisor (contingent from 10/31/89).
Contractor/Supervisor Refresher Course (contingent from 10/18/89).
Inspector (contingent from 4/6/89).

(32)(a) *Training Provider:* Occupational Training Institute, Inc.
Address: 5 Civic Plaza, Suite 310, Newport Beach, CA 92660, Contact: Charles Goeshall, Phone: (714) 721-9578.

(b) *Approved Courses:*
Abatement Worker (contingent from 2/21/89).
Abatement Worker Refresher Course (contingent from 2/21/89).
Contractor/Supervisor (contingent from 2/21/89).
Contractor/Supervisor Refresher Course (contingent from 2/21/89).
Inspector/Management Planner (contingent from 3/16/89).
Inspector/Management Planner Refresher Course (contingent from 2/21/89).

(33)(a) *Training Provider:* Painters District Council No. 36.
Address: 3601 W. Alameda Ave., Suite 200, Burbank, CA 91505, Contact: William Sauerwald, Phone: (818) 941-1366.

(b) *Approved Course:*
Abatement Worker (contingent from 10/15/89).

(34)(a) *Training Provider:* Robert Harvey Griese.
Address: 5933 Telegraph Rd., City of Commerce, CA 90040, Contact: Robert H. Griese, Phone: (213) 720-1805.

(b) *Approved Courses:*
Abatement Worker (contingent from 12/6/89).
Contractor/Supervisor (contingent from 12/6/89).
Inspector/Management Planner (contingent from 12/6/89).

(35)(a) *Training Provider:* Salem Kroeger, Inc.
Address: 106 Church St., Roseville, CA 95678, Contact: Owen C. Tilley, Phone: (916) 784-7222.

(b) *Approved Courses:*
Abatement Worker (contingent from 3/30/89).
Abatement Worker Refresher Course (contingent from 4/3/89).

Contractor/Supervisor (contingent from 3/30/89).
Contractor/Supervisor Refresher Course (contingent from 4/3/89).
Inspector Refresher Course (contingent from 4/3/89).

(36)(a) *Training Provider:* San Diego County Construction Laborers Training & Retraining Trust.

Address: 4161 Home Ave., Second Fl., San Diego, CA 92105, Contact: Bob White, Phone: (619) 263-6941.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/21/89).
Abatement Worker Refresher Course (contingent from 10/18/89).

(37)(a) *Training Provider:* Spectrum Environmental Training.

Address: 6245 Bristol Pkwy., Suite 305, Culver City, CA 90230, Contact: James H. Mondy, Phone: (213) 322-2332.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/6/89).
Contractor/Supervisor (contingent from 12/6/89).

(38)(a) *Training Provider:* The Asbestos Institute.

Address: 2701 East Camelback, Suite 381, Phoenix, AZ 85016, Contact: William T. Cavness, Phone: (602) 224-5404.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/30/88).
Abatement Worker Refresher Course (contingent from 10/31/88).
Contractor/Supervisor (contingent from 6/13/88).
Contractor/Supervisor Refresher Course (contingent from 3/9/89).
Inspector/Management Planner (contingent from 6/17/88).
Inspector/Management Planner Refresher Course (contingent from 6/16/88).

(39)(a) *Training Provider:* The Environmental Institute.

Address: 41 East Foothill Blvd., Suite 104, Arcadia, CA 91006, Contact: Alan M. Lamson, Phone: (618) 447-5216.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/27/88).
Contractor/Supervisor (contingent from 6/27/88).
Inspector/Management Planner (contingent from 6/27/88).
Inspector/Management Planner Refresher Course (contingent from 4/18/89).
Project Designer (contingent from 12/1/88).
Project Designer Refresher Course (contingent from 10/18/89).

(40)(a) *Training Provider:* Univ. of Calf. Extension Programs in Environmental Hazard Management (PHEM) (Formerly Pacific Asbestos Info. Ctr.).

Address: 2223 Fulton St., Berkeley, CA 94720, Contact: Debra Dobin, Phone: (415) 643-7143.

(b) *Approved Courses:*

Contractor/Supervisor (full from 10/1/87).
Contractor/Supervisor Refresher Course (contingent from 10/19/88).
Inspector/Management Planner (full from 11/16/87).
Inspector/Management Planner Refresher Course (contingent from 10/19/88).
Project Designer (contingent from 10/31/89).

(41)(a) *Training Provider:* University Associates.

Address: 3791 N. Camino de Oeste, Tucson, AZ 85745, Contact: John D. Repko, Phone: (602) 624-9366.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 12/1/88).

(42)(a) *Training Provider:* University of Southern California Institute of Safety & Systems Management.

Address: 927 W. 35th Pl., Room 102, Los Angeles, CA 90089-0021, Contact: James O. Pierce, Phone: (213) 740-3998.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 7/27/88).
Inspector/Management Planner (full from 2/2/89).
Inspector/Management Planner Refresher Course (contingent from 2/23/89).

REGION X -- Seattle, WA

Regional Asbestos Coordinator: Matt Wilkening, EPA, Region X, 1200 Sixth Ave. (8T-083), Seattle, WA 98101. (206) 442-8282 (FTS) 399-8282

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region X training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Arctic Slope Consulting Group.

Address: 3801 South Cushman, Fairbanks, AK 99701-7529, Contact: Robert A.Perkins or Clark Milne, Phone: (907) 451-6009.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 10/18/89).
Inspector/Management Planner (full from 10/5/90).
Inspector/Management Planner Refresher Course (contingent from 10/25/89).

(2)(a) *Training Provider:* Asbestos Removal Technologies.

Address: P.O. Box 4762, Vancouver, WA 98662, Contact: Skip Gaultier, Phone: (800) 321-4121.

(b) *Approved Courses:*

Inspector/Management Planner Refresher Course (contingent from 10/25/89).
Inspector/Management Planner Refresher Course (full from 12/26/89).
Project Designer Refresher Course (contingent from 10/25/89).
Project Designer Refresher Course (full from 12/26/89).

(3)(a) *Training Provider:* Asbestos Services International, Inc.

Address: 12360 Southwest Butner Rd., Portland, OR 97225-5818, Contact: Jim Jones, Phone: (503) 644-0246.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 8/23/88).
Inspector/Management Planner (full from 7/17/89).
Inspector/Management Planner Refresher Course (contingent from 10/31/88).
Inspector/Management Planner Refresher Course (full from 1/20/89).
Project Designer (contingent from 10/31/88).
Project Designer (full from 1/17/89).

(4)(a) *Training Provider:* Certified Industrial Hygiene Services, Inc.

Address: 911 Western Ave., Suite 206, Seattle, WA 98104, Contact: Dorothy Stansel, Phone: (206) 622-1096.

(b) *Approved Course:*

Inspector (contingent from 3/25/88).

(5)(a) *Training Provider:* Engineering Continuing Education University of Washington.

Address: GG-13, Seattle, WA 98195, Contact: Susan G. Stone, Phone: (206) 543-5539.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 1/28/88 to 6/1/90 only).
Inspector/Management Planner (full from 2/8/88 to 6/1/90 only).

(6)(a) *Training Provider:* Environmental Health Sciences Lake Washington Vo-Tech.

Address: 11605 132nd Ave., NE., Kirkland, WA 98034, Contact: Dave Rodewald, Phone: (206) 828-5643.

(b) *Approved Courses:*

Inspector/Management Planner (full from 4/11/88).
Inspector/Management Planner Refresher Course (contingent from 1/14/89).
Inspector/Management Planner Refresher Course (full from 1/27/89).
Project Designer (contingent from 12/11/89).

(7)(a) *Training Provider:* Environmental Management, Inc.

Address: P.O. Box 91477, Anchorage, AK 99509, Contact: Debra Chrisman or Gordon Randall, Phone: (907) 272-8056.

(b) *Approved Course:*

Inspector/Management Planner (full from 4/18/88).

(8)(a) *Training Provider:* Hazcon, Inc.

Address: 4636 Marqiael Way S., Suite 215, Seattle, WA 98134, Contact: Mike Krause, Phone: (206) 763-7364.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 3/1/88).
Inspector/Management Planner (full from 4/4/88).
Inspector/Management Planner Refresher Course (contingent from 1/18/89).
Inspector/Management Planner Refresher Course (full from 1/30/89).

(9)(a) *Training Provider:* Heavey Engineers, Inc.

Address: 113 Russell St., P.O. Box 832, Stevenson, WA 98648-0832, Contact: Bernard Heavey, Phone: (509) 427-8936.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 4/13/88).
Inspector/Management Planner (full from 5/2/88).
Inspector/Management Planner Refresher Course (contingent from 1/18/89).
Inspector/Management Planner Refresher Course (full from 3/10/89).

(10)(a) *Training Provider:* NAC Corporation/Northwest Asbestos Consultants.

Address: 1005 Northwest Galveston, Suite E, Bend, OR 97701, Contact: Dale Schmidt, Phone: (503) 389-9727.

(b) *Approved Courses:*

Inspector/Management Planner Refresher Course (contingent from 4/25/89).
Inspector/Management Planner Refresher Course (full from 7/24/89).

(11)(a) *Training Provider:* Northwet Envirocon, Inc.

Address: P.O. Box 169, Washougal, WA 98671, Contact: Debbie Stevison, Phone: (503) 659-8899.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 4/13/88).
Inspector/Management Planner (full from 5/2/88).

(12)(a) *Training Provider:* PBS Environmental Building Consultants, Inc.

Address: 1220 SouthWest Morrison, Portland, OR 97205, Contact: Kelly Strother, Phone: (503) 248-1939.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 2/4/88).
Inspector/Management Planner (full from 3/14/88).
Inspector/Management Planner Refresher Course (contingent from 3/14/89).
Inspector/Management Planner Refresher Course (full from 6/30/89).
Project Designer (contingent from 6/9/89).
Project Designer (full from 6/19/89).
Project Designer Refresher Course (contingent from 10/25/89).
Project Designer Refresher Course (full from 9/18/90).

(13)(a) *Training Provider:* South East Regional Resource Center, Inc.

Address: 210 Ferry Way, Suite 200, Juneau, AK 99801, Contact: William Suss, Phone: (907) 586-6806.

(b) *Approved Courses:*

Inspector/Management Planner Refresher Course (contingent from 4/18/89).
Inspector/Management Planner Refresher Course (full from 6/1/90).

(14)(a) *Training Provider:* Specialized Environmental Consulting, Inc.

Address: P.O. Box 363, Wauna, WA 98395, Contact: Raymond Donahue, Phone: (206) 857-3222.

(b) *Approved Courses:*

Inspector/Management Planner Refresher Course (contingent from 3/7/89).
Inspector/Management Planner Refresher Course (full from 3/20/89).

(15)(a) *Training Provider:* University of Alaska, Mining & Petroleum Training Services.

Address: 155 Smith Way, Suite 104, Soldotna, AK 99669, Contact: Dennis D. Steffy, Phone: (907) 262-2788.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 2/16/88).
Inspector/Management Planner (full from 4/11/88).
Inspector/Management Planner Refresher Course (contingent from 1/14/89).

(16)(a) *Training Provider:* Valley Research Corporation.

Address: 1299 E. 2400 St., Hagerman, ID 83332, Contact: Leon Urie, Phone: (208) 837-6437.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 10/20/89).
Contractor/Supervisor (full from 6/8/90).

(17)(a) *Training Provider:* Washington Association of Maintenance & Operations Administrators, WAMOA.

Address: 12037 Northeast Fifth, Bellevue, WA 98005, Contact: Colin MacRae, Phone: (206) 455-6054.

(b) *Approved Courses:*

Inspector/Management Planner Refresher Course (contingent from 4/25/89).
Inspector/Management Planner Refresher Course (full from 7/24/89).

Dated: February 6, 1991.

Mark A. Greenwood,

Director, Office of Toxic Substances.

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Thursday
February 28, 1991

Part III

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 412

Prospective Payment System for Inpatient Hospital Capital-Related Costs; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 412

[BPD-681-P]

RIN 0938-AE59

Prospective Payment System for Inpatient Hospital Capital-Related Costs

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

ACTION: Proposed rule.

SUMMARY: We are proposing to revise the Medicare payment methodology for inpatient hospital capital-related costs for hospitals paid under the prospective payment system. We would replace the current reasonable cost-based payment methodology with a prospective payment for capital-related costs. This methodology would provide for a 10-year transition period from a blend of a Federal payment and a hospital-specific payment to a fully Federal payment rate. During the transition, a hospital that has a hospital-specific rate above the Federal rate would receive payment on a reasonable cost basis for 90 percent of its costs for "old capital".

DATES: To assure consideration, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5 p.m. on April 29, 1991.

ADDRESSES: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-681-P, P.O. Box 26676, Baltimore, Maryland 21207.

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

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC.

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD.

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

If comments concern information collection recordkeeping requirements, please address a copy of comments to:

Office of Management and Budget, Office of Information and Regulatory Affairs, Room 3206, New Executive Office Building, Washington, DC 20503, Attention: Allison Herron.

In commenting, please refer to file code BPD-681-P. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 am. to 5 p.m. (phone: 202-245-7890).

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FOR FURTHER INFORMATION CONTACT: Barbara Wynn, (301) 966-4529.

SUPPLEMENTARY INFORMATION:

I. Introduction

In this proposed rule, we are changing the regulations that govern the way in which inpatient capital-related costs for hospitals paid under the prospective payment system are treated for Medicare payment purposes. Provisions in the final rule will be effective for hospital cost reporting periods beginning on or after October 1, 1991. Capital-related costs under Medicare include depreciation, interest, taxes, insurance, and similar expenses (defined further in 42 CFR 413.130) for plant and fixed equipment, and for movable equipment. Capital costs do not include a return on equity capital for proprietary hospitals.

Currently, inpatient operating costs are the only costs covered by the prospective payments received by hospitals under the prospective payment system (Part 412). Payment for capital-related costs has been on a reasonable cost basis (§ 413.5) under part 413, subpart G because, under sections 1886 (a)(4) and (d)(1)(A) of the Act, those costs have been specifically excluded from the definition of inpatient operating costs. Section 1886(g)(1) of the Act requires that capital-related costs be paid under a prospective payment system effective with cost reporting periods beginning on or after October 1, 1991 for hospitals paid under the prospective payment system. In this proposed rule, we would add a new subpart M to part 412 to provide for a prospective payment system for inpatient capital-related hospital costs. (Certain conforming changes and other technical changes to other subparts in part 412 would be made in the final rule.) Hospitals and hospital distinct part units that are excluded from the prospective payment system would continue to be paid for capital-related costs on a reasonable cost basis (§ 413.5) under part 413, subpart G.

II. Background

Under section 1886(d) of the Act, the Medicare program pays for the operating costs attributable to inpatient hospital services under a prospective payment system in which payment is made at a predetermined, specific rate for each discharge. Operating costs are defined in section 1886(a)(4). As originally enacted, section 1886(a)(4) of the Act excluded capital costs from the definition of inpatient operating costs for cost reporting periods beginning before October 1, 1986. On June 3, 1986, we published a notice of proposed rulemaking to amend the regulations to incorporate capital-related costs into the Medicare prospective payment system effective with cost reporting periods beginning in Federal fiscal year (FY) 1987, which began on October 1, 1986 (51 FR 19970). However, on July 2, 1986, section 206 of the Urgent Supplemental Appropriations Act of 1986 (Pub. L. 99-349) amended section 1886(a)(4) of the Act to postpone for an additional year the inclusion of capital-related costs into the definition of operating costs (that is, for cost reporting periods beginning on or after October 1, 1987). Subsequently, section 9303(c) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509) further revised section 1886(a)(4) of the Act by providing that capital-related costs be excluded from inpatient operating costs for cost reporting periods beginning prior to October 1, 1987 or later at the Secretary's discretion.

On May 19, 1987, we published a proposed rule in the **Federal Register** (52 FR 33168) to amend the Medicare regulations to incorporate capital-related costs into the prospective payment system effective with hospital cost reporting periods beginning on or after October 1, 1987.

We think it is important to note that, in developing the capital payment policy described in the May 1987 proposed rule, we took into consideration the 1986

recommendations of the Prospective Payment Assessment Commission (ProPAC) concerning capital payment policy and numerous public comments on the June 3, 1986 proposed rule (51 FR 19970) in which we initially proposed to incorporate capital costs into the prospective payment system. Based on those recommendations and comments, we significantly revised the original proposal, published in the June 1986 proposed rule, before publishing the May 1987 proposed rule. Based on public comment, we further revised the capital payment policy before publishing the final rule in the Federal Register on September 1, 1987 (52 FR 33168).

The September 1987 final rule to amend the Medicare regulations to incorporate capital-related costs into the prospective payment system effective with hospital cost reporting periods beginning after September 30, 1987 provided for the following policies:

- We established national urban and rural capital rates separately for plant and fixed equipment and for moveable equipment using the best data currently available.
- We standardized the capital costs for differences in case mix complexity, indirect medical education, and disproportionate share payments. We also standardized plant and fixed capital costs by an area construction cost adjustment. In addition, we standardized moveable equipment capital costs for hospitals in Alaska and Hawaii by a cost-of-living adjustment.
- We updated the standardized average capital costs to FY 1988 by the estimated actual increase in capital costs per case. We provided that subsequent updates would be based on the overall prospective payment update factor (which would include changes in the price of items included in a capital market basket).
- We provided for two transition periods as follows—

—A ten-year transition period for incorporating capital payments for plant and fixed equipment; and

—A seven-year transition period for incorporating capital payments for moveable equipment.

- We amended the existing payment policy for outliers (42 CFR part 412, subpart F), which is authorized by section 1886(d)(5)(A) of the Act, to include Federal capital payments for outlier cases. We provided that the cost outlier policy (§ 412.84) would be based on inpatient operating costs including capital, and that we would pay cost outliers only when inpatient operating costs (including capital) for a case are above the cost outlier threshold.
- We stated that we would determine the hospital-specific portion each year based on Medicare's allowable capital costs in that year (a rolling base), subject to the applicable blending percentages for each year of the transition.
- We included Puerto Rico hospitals in the prospective capital payment process in accordance with sections 1886(d)(9) and (g)(3)(A) of the Act.
- For FY 1988 and FY 1989, we provided for an adjustment to the capital payment amounts (Federal and hospital-specific portions) in order that the aggregate capital payment amounts under the prospective payment system would have approximated the aggregate capital payment amounts that would have been made on a reasonable cost basis during FYs 1988 and 1989, taking into account the reductions then prescribed under section 1886(g)(3) of the Act.
- We provided for capital payments to new hospitals on the same basis as all other hospitals subject to the prospective payment system, using the rolling base approach and the applicable Federal/hospital-specific blend for the Federal fiscal year in which the hospital first participated in the Medicare program.
- We excluded sole community hospitals from prospective payments for capital for cost reporting periods beginning before October 1, 1990, in accordance with section 1886(g)(3)(C)(i) of the Act (prior to amendment by Pub. L. 100–203).
- We provided for additional capital payments to hospitals that would have been financially disadvantaged during the capital payment transition period by the changeover from reasonable cost-related payment to prospective payments for capital. The amounts paid under this exceptions process would have been obtained by reducing the average standardized capital payment rates by five percent of the total Federal capital payments.

A hospital would have been eligible for an additional payment if the portion of the hospital's allowable inpatient capital costs paid under the Federal rate was 175 percent or more than the total of the hospital's Federal capital payments (excluding payments for the hospital-specific portion) for that period.

The amount of the additional capital payment would have been equal to 70 percent of the difference between 175 percent of the hospital's total Federal capital payments and its portion of the actual allowable inpatient capital cost paid through the Federal rate.

On December 22, 1987, section 4006 of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203) voided the September 1, 1987 final rule on payment for capital-related costs (52 FR 33168). Section 4006(b) of Public Law 100–203 revised section 1886(g)(1) of the Act to require the Secretary to establish a prospective payment system for the capital-related costs of prospective payment system hospitals for cost reporting periods beginning in FY 1992. The amendment also dropped the earlier exemption from the capital prospective payment system for sole community hospitals. The accompanying conference committee report (H.R. Rep. No. 495, 100th Cong., 1st Sess. 535 (1987)) noted that "At that point (October 1, 1991) hospitals will have had more than eight years since the Congress originally indicated its intent in 1983 to reimburse for capital-related costs on a prospective basis."

As amended by Public Law 100–203, section 1886(g)(1)(B) of the Act provides that the capital prospective payment is to be on a per discharge basis appropriately weighted for the classification of the discharge. It also gives the Secretary discretion to provide for adjustments to capital prospective payments for relative cost variations in construction by building type or area, for appropriate exceptions (including those to reflect capital obligations), and for adjustments to reflect hospital occupancy rate. Beyond the specific guidance provided by revised section 1886(g)(1) of the Act and supporting Congressional reports, the Secretary has substantial latitude in implementing the capital prospective payment system.

As amended by Public Law 100–203, section 1886(g)(3)(A) of the Act provided for a 12 percent reduction in capital payments for portions of cost reporting periods or discharges, as appropriate, occurring on or after January 1, 1988 and a 15 percent reduction during FY 1989. This 15 percent reduction was effectively extended through FY 1990 by section 6002 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239).

On November 5, 1990, the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) was enacted. Section 4001(a) of that law amended section 1886(g)(3)(A)(v) of the Act to further extend the 15 percent reduction in capital-related costs of inpatient hospital services through FY 1991.

In addition, section 4001(b) of Public Law 101–508 amended section 1886(g)(1)(A) of the Act by specifying that during FY 1992 through FY 1995 aggregate payments under section 1886(d) and section 1886(g)(1)(A) should be reduced in a manner that results in

savings equivalent to 10 percent of the amount of payments attributable to capital-related costs that would otherwise have been made on a reasonable cost basis during each of those fiscal years. The Committee Report accompanying the legislation noted that the provision provides the Secretary with the flexibility to adjust either or both the operating or capital payments, so long as the net reduction is 10 percent, and indicated that the Secretary may estimate the 10 percent reduction based on the best available data (H.R. Rep. No. 964, 101st Cong., 2nd Sess. p. 691 (1990)).

III. Summary of the Proposed Rule

A. Differences From the 1987 Final Rule

In light of comments on our previous approaches to include capital-related costs in the prospective payment system and payment methods, the vacating of our September 1, 1987 final rule (52 FR 33168), the wider latitude provided to the Secretary to create a prospective payment system for capital-related costs under section 1886(g)(1) of the Act, and more recent discussion and comments received from hospital industry representatives and other interested individuals, we have revised our methodology for a prospective payment system for capital-related inpatient hospital costs.

First, we have modified our transition payment policy. A major dilemma in establishing a prospective payment system for capital costs has been how to provide for an appropriate transition from reasonable cost reimbursement to a prospective payment rate based on industry-wide average capital costs. Under an average pricing system, payment will not be based on the experience of an individual hospital. Although this should not adversely impact hospitals in the long-term, payment on this basis in the short-run could significantly overpay or underpay many hospitals relative to actual capital costs. Capital expenditures, particularly for plant and fixed equipment, are subject to long-term replacement, renovation and expansion plans and may not be amenable to short-term adjustment due to the commitment of capital funds involved. Of particular concern are hospitals that have recently undertaken major capital expansions, and therefore have relatively high capital costs, and hospitals that currently have relatively low capital costs but will be undertaking major capital projects in the future.

A transition payment policy is needed to provide hospitals with sufficient time to adjust their operations and capital financing to accommodate prospective Federal capital payment rates. Our transition payment policy in the 1987 rule provided for a rolling-base approach to the hospital-specific portion of the prospective payment. That is, in each year of the transition, the hospital-specific portion would have been based on a hospital's actual allowable capital costs for that year. By weighting the transition blend heavily toward the hospital-specific portion for several years, payment in the early years would have been largely based on cost reimbursement. This provides time-limited protection not only for a hospital's prior commitments but also for new capital acquisitions.

Hospital industry representatives have expressed concern that the rolling-base option may not adequately recognize the capital requirements of those hospitals that have recently undertaken capital expansions and those that will be undertaking major capital projects in the future. The rolling-base approach provides only time-limited protection to hospitals for their prior capital commitments since, under the payment blending schedule used with that approach, the hospital-specific portion of the payment declines significantly after five years. During the early part of the transition when the high percentage of the payment is based on the hospital-specific portion, the payment to hospitals with relatively low capital costs may not be sufficient to provide them with the additicnal funds they would need to undertake capital projects at a later date when all or most of the prospective payment would be based on the Federal payment rate.

In developing this proposed rule, we considered a transition provision that would grandfather "old" capital, that is, continue to pay indefinitely on a reasonable cost basis for capital-related costs for assets that were acquired by a certain date. Under the pure grandfathering approach, payment for capital-related costs under the prospective payment system would be for "new" capital only. Because of the budget neutrality constraint on total capital payments, higher payments for "old" capital would result in lower payments for "new" capital. Thus, although the grandfathering approach would provide maximum protection for capital expenditures for "old" capital, the "new" capital payment could be insufficient to allow a hospital with relatively low "old" capital costs to save enough to cover its costs when it invests in new capital. Because the pure grandfathering approach does not adequately address the concerns of these hospitals, we do not believe that it is appropriate. Instead, we believe that the underlying goal of the grandfathering approach, protecting hospitals that currently have relatively high capital cost, obligations, can be achieved by grandfathering the "old" capital costs for these hospitals only (which we refer to as a "hold-harmless" provision). This approach would also provide greater protection to hospitals that currently have relatively low "old" capital costs and face major capital expenditures in the future.

We are making other significant changes from the policies in the September 1, 1987 final rule. First, we no longer believe that there should be a distinction between expenses for fixed capital and moveable capital during the transition period. Such a distinction is complex and burdensome on both the Medicare fiscal intermediaries and prospective payment system hospitals since it would require that all capital assets be categorized, and that interest expenses be allocated, between the two types of capital. Therefore, we are not proposing to deal differently with these two types of capital-related costs in the transition period to a full capital prospective payment system.

Also, the September 1, 1987 final rule provided for incorporating capital into the prospective payment system for operating costs under section 1886(d) of the Act. Section 1886(g)(1)(A) of the Act requires that the Secretary establish a prospective payment system for capital-related costs. Consistent with the greater discretion afforded the Secretary under section 1886(g)(1), we are proposing payment policies that are specifically appropriate for capital prospective payments and do not necessarily follow the prospective payment system for operating costs.

Finally, the September 1, 1987 final rule provided for an update equivalent to the rate of increase in the capital market basket. We are proposing to develop an update framework for capital prospective payments that, in addition to taking into consideration changes in the capital market basket, would take into account other changes in capital requirements resulting from new technology and other factors, such as changes in occupancy rates. Through FY 1995 and until such time our work on the update framework is completed, we would base the update on the actual rate of increase in Medicare inpatient capital costs per case that occurred two years previous to the fiscal year in question, adjusted for changes in case mix. Aggregate capital payments through FY 1995 would be equal to 90

percent of the amounts that would have been payable on a reasonable cost basis.

B. Major Provisions of the Proposed Rule

In this proposed rule, we are changing the regulations that apply to the way in which inpatient hospital capital-related costs would be treated for Medicare payment purposes for hospitals subject to the prospective payment system, effective with cost reporting periods beginning on or after October 1, 1991. The major provisions of this proposed rule follow:

- We would establish a standard Federal rate for capital-related inpatient hospital costs on a per discharge basis based on the estimated FY 1992 national average Medicare capital cost per discharge for hospitals and hospital units subject to the prospective payment system.
- We would also calculate a rate specific to hospitals located in Puerto Rico. Puerto Rico hospitals would be paid based on 75 percent of the Puerto Rico rate and 25 percent of the national rate.
- We would make the following payment adjustments to the Federal rate:

—We would adjust for case mix using the DRG relative weight.

—We would adjust for geographic location using an adjustment factor that is derived from the hospital wage index. The adjustment, which would be applied consistent with the regression results, would increase payments 4.6 percent for each 10 percent increase in the value of the wage index. In addition, we would include a 1.6 percent higher payment to hospitals located in large urban areas (urban areas with more than one million population or 970,000 in New England).

—We would provide for a disproportionate share payment adjustment for urban hospitals with 100 or more beds. The adjustment would increase payments approximately 4.2 percent for each 10 percent increase in a hospital's disproportionate share percentage.

- In lieu of standardizing each hospital's capital cost per discharge for the payment adjustments and computing a national standardized amount for capital, we would determine by formula a standard Federal payment rate that, after taking into account the payment adjustments, would result in aggregate payments equal to aggregate FY 1992 Medicare inpatient capital costs (which would be further adjusted for budget neutrality).
- We would provide additional payments for extraordinarily costly or long length of stay cases. We would amend the existing payment policy for outlier cases (42 CFR part 412, subpart F) to include Federal capital payments for these cases and we would reduce the Federal capital payment by the estimated capital outlier payments. We propose that the cost outlier threshold (§ 412.84) would be based on inpatient operating costs and capital costs, and that we would pay cost outliers only if both inpatient operating and capital costs for a case are above the cost outlier threshold.
- We propose to determine a hospital-specific rate based on the hospital's Medicare allowable inpatient capital costs per discharge for its latest 12-month cost reporting period ending in FY 1990 (that is, cost reporting periods ending after September 30, 1989 and on or before September 30, 1990). We would standardize the hospital-specific rate for case mix and would update it to FY 1992 based on the estimated national average increase in Medicare capital-related costs per discharge adjusted for case mix change.
- We propose to define old capital costs as allowable Medicare inpatient interest and depreciation expenses for capital assets that are reported on the Medicare cost report for the hospital's latest cost reporting period ending in FY 1990.
- We propose to define new capital costs as allowable Medicare depreciation and interest for capital assets that were first reported as being used for patient care in a cost reporting period ending after September 30, 1990 and allowable Medicare inpatient costs for other capital-related expenses including leases, rentals (including license and royalty fees for the use of depreciable assets), insurance expense on depreciable assets, related organization capital-related costs for assets that are not maintained on the hospital's premises and taxes on land or depreciable assets used for patient care.
- We propose to establish a 10 year transition period (that is, cost reporting periods beginning on or after October 1, 1991 and before October 1, 2001.) A hospital would be paid under one of two different payment methodologies during this period. Generally, hospitals with a hospital-specific rate below the Federal rate would be paid on a fully prospective payment methodology. Hospitals with a hospital-specific rate that is above the Federal rate would be paid based on the hold-harmless payment methodology. A hospital would be paid under one methodology throughout the entire transition After the transition period, all hospitals would be paid the Federal rate.
- Under the fully prospective payment methodology, a hospital that has a hospital-specific rate below the Federal rate would receive capital payments per discharge based on a blend of its hospital-specific rate and the Federal rate. The FY 1992 payment would be based on a 90 percent hospital-specific rate and 10 percent Federal rate blend. The Federal portion of the payment would increase by 10 percentage points per year. After 9 years, the hospital would be paid 100 percent of the Federal rate.
- Under the hold-harmless payment methodology, a hospital would receive capital payments per discharge based on the higher of:

—90 percent of reasonable costs for old capital costs (subject to a budget neutrality adjustment discussed below) plus a payment for new capital costs which is a proportion of the Federal rate. The proportion of the Federal rate paid for new capital would be based on the ratio of the hospital's Medicare inpatient costs for new capital to total Medicare inpatient capital costs and could not exceed the national ratio of Medicare inpatient new capital to total Medicare inpatient capital; or,

—100 percent of the Federal rate (or the applicable blend of its hospital-specific rate and the Federal rate, if lower).

Once a hospital under the hold-harmless payment methodology was paid based on 100 percent of the Federal rate, it would continue to be paid on that basis throughout the remainder of the transition and could not receive a reasonable cost payment for old capital in subsequent cost reporting periods. After 10 years, the hold-harmless payment would end and all hospitals would be paid 100 percent of the Federal rate.

- To determine the amount of payment under the hold-harmless payment methodology, we would require that throughout the transition hospitals separately identify on their Medicare cost reports depreciation and interest expenses on old capital. Reasonable cost principles for capital-related costs would continue to apply to capital expenses paid under the hold-harmless provision.
- We would provide for an exceptions process to make additional payments to hospitals that are financially disadvantaged during the transition period. For FY 1992, we would provide that a hospital would be eligible

for an exceptions payment if its capital costs exceed 150 percent of the capital payments it would have received in the absence of the exceptions process. A hospital would be paid 75 percent of its costs in excess of the 150 percent threshold. This exceptions policy would be applicable to hospitals paid under either the fully prospective or the hold-harmless payment methodology.

• Recognizing the special need to maintain access to care in rural areas and for low income patients, we would provide special protection to urban hospitals with more than 100 beds that have a disproportionate share percentage of 30 percent or more and for rural sole community hospitals that are financially vulnerable. The amount of the additional payment would be based on the relative size of the new capital project. If the project results in capital costs per case that are 3.0 times the hospital's hospital-specific rate, the hospital would be eligible for a capital exceptions payment equal to 75 percent of its Medicare inpatient capital costs in excess of 100 percent of its Medicare inpatient capital payments in the absence of the exceptions process. If the resulting capital costs per case are less than 1.5 times the hospital-specific rate, the hospital would be eligible for an additional payment equal to 75 percent of costs above 125 percent of payments. We would use a sliding scale for hospitals with Medicare inpatient costs per discharge that are greater than 1.5 and less than 3.0 times its hospital-specific rate. The amount of the exceptions payment under this provision could not result in total Medicare payments for inpatient hospital services that exceed the hospital's total Medicare inpatient costs during the cost reporting period.

• We would reduce the Federal rate and the hospital-specific rate by up to 10 percent each year to make additional payments for exceptions. The actual exceptions adjustment factor would result in an aggregate reduction in payments based on the Federal rate and the hospital-specific rate equal to the estimated amount of the total exceptions payments. We estimate that the level of exception payments would require less than a 10 percent reduction in the first two years of the transition. After the first two years, we would raise the eligibility criteria or the payment levels for exceptions as necessary to limit the exceptions payments to 10 percent of total prospective payments for inpatient capital costs.

• If a newly participating hospital does not have a 12-month cost reporting period ending on or before September 30, 1990, we would use the first 12-month cost reporting period (or combination of cost reporting periods totalling at least 12 months) as the hospital's base period for purposes of determining its hospital-specific rate. The hospital would be paid under the fully prospective payment methodology since by definition it has no old capital.

• Through FY 1995, we would provide for an update in the Federal rate and the hospital-specific rate based on actual increases in Medicare capital-related costs per case that occurred two years previous to the Federal fiscal year in question (the most recent year for which we would have data), adjusted for changes in case mix. Beginning in FY 1996, we propose to determine the update through an analytical framework that would take into consideration increases in the capital market basket and appropriate changes in capital requirements resulting from new technology and other factors, such as changes in occupancy rates.

• In FY 1992 through FY 1995, we would adjust payments in accordance with section 1886(g)(1) of the Act as amended by section 4001(b) of Public Law 101–508 so that aggregate payments for capital each year are equal to 90 percent of what would have been payable for capital-related costs on a reasonable cost basis. If a positive adjustment in capital payments is required, we would apply a percentage increase to the Federal rate and the hospital-specific rate. If a negative adjustment is required, we would apply a percentage reduction to the hold-harmless payments in addition to the Federal rate and the hospital-specific rate.

IV. Capital Payment Policy—Specific Methodology

Under this proposed rule, a hospital subject to the prospective payment system would begin receiving payments for inpatient hospital capital-related costs on a prospective payment basis as required by section 1886(g)(1) of the Act effective with its first cost reporting period beginning on or after October 1, 1991. During the transition period, the hospital's capital payment would be based on the hospital's own capital cost experience and the Federal payment rate. Two different payment methodologies would apply during the transition. Generally hospitals with a hospital-specific rate below the Federal rate would be paid based on a blend of the hospital-specific rate and the Federal rate. Hospitals with a hospital-specific rate above the Federal rate would receive the higher of the Federal rate or a hold-harmless payment for old capital plus a payment for new capital. All capital payments would be based on the Federal payment rate effective with cost reporting periods beginning on or after October 1, 2001.

To achieve budget neutrality in aggregate payments, our proposal requires that we develop a dynamic model of Medicare inpatient capital costs, that is, a model that projects changes in Medicare inpatient capital costs over time. The model would be used to project the amount of capital that would be covered by the hold-harmless provision, the rate at which the old capital will be depreciated and written off, and the rate at which new capital will be acquired. The model is necessary to establish the combination of payment policies that would result in total capital payments each year during the period of FY 1992 through FY 1995 that are equivalent to 90 percent of the amount that would have been payable in that year on a reasonable cost basis. It would also be used to estimate the proportion of total capital costs that represents new capital costs for purposes of determining the limit on new capital payments to hospitals paid under the hold-harmless provision. It would also be used to estimate payments under the exceptions process.

The model, which projects capital expenditures for 6,000 hypothetical hospitals by hospital and year since 1956, includes the following assumptions:

• Aggregate capital expenditures are equal to historical Medicare inpatient capital cost levels for periods for which actual data are available (FY 1984–88) and to the reasonable cost levels that were used to project capital payments in the Medicare budget for subsequent periods. The proportions that are attributable to fixed and moveable equipment and to the major components of capital costs (interest, depreciation, and other) are based on historical proportions.

• Fixed and moveable assets are modeled separately. The average useful life for moveable equipment is 7 years and for fixed equipment is 25 years. On average, fifty percent of capital is financed at an interest rate of 6.3 percent. Interest expense is amortized over the useful life of the asset.

• The total amount of new capital in a given year is determined as the difference between total capital costs and the costs for old capital. New capital is randomly assigned to hospitals each year because we observed in the cost report data irregular capital growth patterns. For individual hospitals, we observed a

general pattern of small increases in capital costs in most years but random large increases in a few years.

Combining these assumptions with the specific payment policies outlined in greater detail below, we propose to use this actuarial model to estimate the basic payments that would be made under the fully prospective payment methodology and under the hold-harmless payment methodology, project the amount of payments that would be made under the exceptions policy, and determine the budget neutrality adjustment factor. The model and its application are more fully described in appendix A.

In addition to the actuarial model, we would use the most recent Medicare cost report data to determine the Federal rate and the appropriate payment adjustments to the Federal rate.

A. Determination of the Federal Capital Payment Rates

Step 1—Base Year Average Capital Cost Per Case

a. *National Average.* We propose to base the Federal capital prospective payment rates on the projected FY 1992 national average Medicare inpatient capital-related cost per discharge for all hospitals and hospital units subject to the prospective payment system. The FY 1992 national average would be determined by updating the FY 1988 discharge weighted national average capital-related cost per discharge determined from cost report data by an actuarial estimate of the increase in Medicare inpatient capital costs per discharge. The estimate takes into account projected changes in total inpatient capital costs, hospital admissions, and Medicare utilization.

The following update factor percentages were used to establish the Federal capital prospective payment rates set forth in Table 1 of the preamble of this proposed rule:

Fiscal year	Estimated increase in medicare inpatient capital costs per case
FY 1989	10.55 percent
FY 1990	7.25 percent
FY 1991	6.04 percent
FY 1992	6.80 percent

b. *Average for Puerto Rico Hospitals.* Pursuant to section 1886(d)(9)(A) of the Act, under the prospective payment system for operating costs, hospitals located in Puerto Rico are paid under a special payment formula. These hospitals are paid a blended rate that takes into account their large urban, other urban, or rural designation and is comprised of 75 percent of the applicable standardized amount specific to Puerto Rico hospitals and 25 percent of the applicable national average standardized amount. The September 1, 1987 capital rule provided that the same payment formula would be followed with respect to the capital prospective payments to Puerto Rico hospitals.

As in the case of operating costs per case, Puerto Rico hospitals have significantly lower capital costs per case than other hospitals. The average PPS–5 capital cost per case for Puerto Rico hospitals ($209) was 40 percent of the national average ($533). Only one hospital had a capital cost per case ($564) that exceeded the national average, and 75 percent of the hospitals had capital costs per case below $300. We do not believe that the capital prospective payment system should result in windfall payments to Puerto Rico hospitals. Therefore, we are proposing to follow the blended payment rate used in the prospective payment system for operating costs. We would compute a separate payment rate specific to Puerto Rico hospitals using the same methodology as is used to compute the national rate. Hospitals in Puerto Rico would be paid based on 75 percent of the Puerto Rico rate and 25 percent of the national rate.

Step 2—Payment Adjustments

We are proposing a different combination of payment adjustments for use in establishing the Federal capital prospective payment rates than were set forth in the September 1, 1987 final rule. When the September 1, 1987 final rule incorporating capital-related cost into the prospective payment system was issued, sections 1886(a)(4) and (d)(1)(A) of the Act required that we incorporate the payment of capital-related costs into the existing framework of the prospective payment system by including capital-related costs in the definition of operating costs. Thus, the September 1, 1987 capital final rule provided for establishing separate capital-related standardized amounts for urban and rural hospitals and hospitals located in Puerto Rico and for adjusting the Federal capital payment for the DRG weight, the indirect teaching adjustment factor and the disproportionate share adjustment factor applicable to noncapital-related operating costs. At the time, we noted that the evidence for adjusting capital-related costs for the indirect costs of medical education and disproportionate share was inconclusive. In lieu of adjusting the Federal capital payment by the hospital wage index, we provided that local cost variation in capital-related costs would be accounted for by applying a construction cost index to the Federal payment portion for plant and fixed equipment. In addition, we provided that the Federal payment portion of payments to hospitals located in Alaska and Hawaii for moveable equipment would be adjusted for the effects of higher cost of living.

Section 4006(b)(1) of Public Law 100–203, which voided the September 1, 1987 capital final rule, amended section 1886(g)(1)(A) of the Act to establish a specific provision for a capital prospective payment system that provides the Secretary with wider latitude than previously provided to determine which payment adjustments are appropriate for a capital prospective payment system and the level at which these adjustments should be made. As added by section 4006(b)(1) of Public Law 100–203, section 1886(g)(1)(B) of the Act requires only that the prospective payment for capital-related costs is to be on a per discharge basis and that it should be appropriately weighted for the classification of the discharge. In addition, revised section 1886(g)(1)(B) indicates that the capital prospective payment system may provide for adjustments for variations in the relative costs of capital and construction, appropriate exceptions, and a suitable adjustment to reflect hospital occupancy rate.

We have done extensive regression analysis of the relationship between capital costs and the payment variables used in the prospective payment system for operating costs in order to determine which adjustments would be appropriate for capital payments. Our analysis indicates that variables relating to the age and financing of capital are significant factors in explaining the variation in capital costs per case. In the short run, we are recognizing the impact of these variables on capital costs per case through the different transition payment methodologies. However, we do not believe that it is appropriate to recognize the effect of these variables in the payment system for the long run. We believe the Federal capital payment should be independent of the age of an individual hospital's assets or its capital financing. Hospitals that are identical except that one recently purchased a new piece of equipment and the other is accumulating funds to purchase the same equipment next year should not be paid differently for treating the same type of case. By severing the link between Medicare payment and capital spending decisions, we will provide neutral incentives with respect to the

timing and financing of new capital acquisitions. This will provide hospitals with an incentive to minimize the overall cost of new capital investment and to make decisions that are sensitive to market conditions. We would expect hospitals to adapt to the fact that, after the transition period, their payments would no longer vary based on their actual capital cost experience. Accordingly, we are not creating payment adjustments for capital age and financing attributes. However, as explained below, we controlled for these characteristics in determining the appropriate payment adjustments by including variables for asset age, financing, and occupancy in our regression equation. By including these variables, we are able to determine what the appropriate payment adjustments would be after accounting for differences in the capital age and financing characteristics. If we did not include these variables in our regression, their effects could have been attributed to the payment variables that we are proposing to establish and affected the level of the payment adjustments. We controlled for the following capital characteristics in our regression equations:

• Age

We measured the age of fixed assets and moveable assets using their ratios of accumulated depreciation (including any fully depreciated assets) to current depreciation. We measured the remaining depreciable life of fixed assets using the ratio of remaining depreciation to current depreciation (which would not include any fully depreciated assets). We found that these variables explain variations in capital costs and included them in our regression equations. We found that the remaining depreciable life of moveable capital does not help explain variation in capital costs; therefore, we did not include this variable in our equations.

• Financing

We included two financing variables. The first financing variable is the ratio of total liabilities to total assets, which measures the hospital's reliance on debt. Medicare capital costs include interest expense, but not return on equity, and so more highly leveraged hospitals will necessarily have higher capital costs, all else being equal. An alternative measure of leverage was considered, the ratio of long term debt to net fixed assets, but this variable did not explain as much of the variation in capital costs per case and was dropped from further analysis. The second financing variable measures the extent to which assets are held in the form of financial or other investments rather than physical hospital assets. In this case, we would expect hospitals that have a higher proportion of investment in non-capital assets to have lower capital costs, all else being equal. Our analysis found that the relationship between the two financing variables and capital costs per case was as expected and that the two variables were statistically significant.

• Occupancy.

We believe it is more appropriate to control for the effects of occupancy on capital costs per case in determining the appropriate level of other payment adjustments than to make an explicit payment adjustment for occupancy. Therefore, we included the ratio of total inpatient days to available bed days with the age and financing variable categories in our regression equations. Other things being equal, we would expect higher occupancy hospitals to have lower capital costs per case because the capital costs are spread over more patients. We found that when only the age and financing variables are included in the regression equation, occupancy was strongly positive, demonstrating that higher occupancy hospitals tend to invest more heavily than lower occupancy hospitals. However, after adding the payment variables that are used in the prospective payment system for operating costs to the regression equation, we found, as expected, that higher occupancy hospitals have lower capital costs per case. The variable was statistically significant.

We used several different regression equations to analyze the relationship between capital costs and potential payment variables. As dependent variables, we used total Medicare inpatient capital costs per case, as well as fixed and moveable components, and the ratio of capital costs to operating costs. In addition to the age and financing variables, we used the prospective payment system for operating costs payment variables and a construction cost index as independent variables. We analyzed one series of regression equations to make a variable by variable comparison with the regression coefficients for operating costs per case, in order to determine which payment variables are significant in explaining variations in capital costs and to discover any differences in the magnitude and direction of the adjustment for these variables compared to the adjustment for operating costs.

We drew the following conclusions from the regression results:

• Case mix has a greater impact on capital costs than on operating costs. Capital costs vary more than proportionately with the variation in case mix; that is, a 10 percent increase in case mix results in more than a 10 percent increase in capital costs per case. However, the disproportionate effect is attributable to hospitals with fewer than 100 beds. For other hospitals, which account for most of Medicare discharges, capital costs increase proportionately with case mix.

• Hospitals with a higher proportion of outlier payments have higher capital costs, although outliers have a smaller impact on capital costs than on operating costs.

• Hospitals located in high wage areas have higher fixed and moveable capital costs. The wage index consistently explains more of the variation in capital costs than the construction cost index.

• The intern to bed ratio, which is used as a measure of teaching intensity, is significant and consistently negative. In other words, all else being equal, teaching hospitals have lower capital costs than nonteaching hospitals. This indicates that the other variables more than account for the higher capital costs of teaching hospitals.

• A hospital's disproportionate share percentage of low income patients has a comparable effect on capital costs and on operating costs. For urban hospitals with more than 100 beds, hospitals with a higher disproportionate share percentage have higher capitals costs. The disproportionate share effect for these hospitals is attributable solely to moveable equipment. The disproportionate share effect on the capital costs of other hospitals is not significant.

• Urban hospitals have significantly higher capital costs per discharge than rural hospitals.

After determining which payment variables were not significant (or had negative coefficients), we used a final regression equation to determine the size of the adjustments for the payment variables that we concluded should be accounted for in the capital prospective payment system. Our dependent variable was capital costs per case standardized by the case mix index. (The effect of standardizing the capital costs by the case mix index is to constrain the effect of the case mix index to 1.0.) The independent variables were: the hospital wage index based on 1988 wage data; the disproportionate share percentage for urban hospitals with 100 beds or more; dummy variables for large urban (urban areas with more

than 1 million population) and other urban location; and the capital age, financing, and occupancy variables.

As a final step, we simulated the payments that would result from the level of the payment adjustments indicated by the regression equation and compared them with actual capital costs per case and capital costs per case standardized for the capital age and financing variables. We used the simulation results to confirm, and revise as appropriate, the proposed payment adjustments.

Thus, we used both regression analysis and payment simulations to develop payment adjustments that take into account variations in costs between groups of hospitals in an equitable manner.

In performing our regression analysis, we used PPS–5 cost report data (that is, data from cost reporting periods beginning in FY 1988). We found that we were able to develop reliable capital age and financing variables from the cost report balance sheet information for only 1,906 of the 4,902 hospitals in our data base. Therefore, the regression analysis as well as the payment simulation used data for the 1,906 hospitals. Although the 1,906 hospitals are not a statistical sample of all hospitals subject to the prospective payment system, the distribution of these hospitals across the major hospital groupings is generally representative of the national distribution of hospitals. On average, the 1,906 hospitals have a somewhat lower average PPS–5 cost per case ($489.18) than the 4,902 hospitals ($532.52).

In the payment simulation, we constrained total payments to the hospitals' PPS–5 reasonable costs for capital. We are using the results of these analyses to establish the proposed payment adjustments for the Federal capital payments. We will re-examine the level of the adjustments and make any appropriate changes if more recent data become available before publication of the final rule. Moreover, we propose to re-examine the appropriateness of the adjustments on a periodic basis in the future.

Based on our analyses, we propose to make adjustments to the capital Federal payment rate for case mix, local cost variation, large urban location and percentage of low income patients. In addition, we propose to make additional payments for outlier cases, as discussed in Step 4, below. A discussion of each payment adjustment follows.

• Case mix.

Under the prospective payment system for operating costs, all discharges are classified according to a list of diagnosis-related groups (DRGs). The payment per discharge varies by the DRG to which a beneficiary's stay is assigned. The formula used to calculate payment for a specific case takes an individual hospital's payment rate per case and multiplies it by the weight of the DRG to which the case is assigned. Each DRG weight represents the average resources required to care for cases in that particular DRG relative to the average resources required to treat cases in other DRGs. The DRG classification system and the methodology used to recalibrate the DRG relative weights are described in the September 4, 1990 prospective payment system final rule (55 FR 36008).

We propose to use the DRG patient classification system for the capital prospective payment system and to adjust the Federal capital payment (and the hospital-specific rate) by the DRG relative weight that is currently applied to operating costs. The regression result indicating that capital costs vary more than proportionately with the case mix index implies that there should be a relatively greater case-mix adjustment for capital costs than for operating costs. However, the disproportionate case mix effect is attributable to hospitals with less than 100 beds. The regression coefficient for larger hospitals, which have most of the Medicare discharges, indicates that the case mix effect on capital costs for these hospitals is comparable to the case mix effect on operating costs. Therefore, we believe it is appropriate to use the same DRG relative weights. Further, we use total charges to recalibrate the DRG relative weights used in the prospective payment system for operating costs. As a result, capital costs are already reasonably represented in the relative weights and a set of weights specific to capital costs is unnecessary. We also note that as capital use intensity changes in an individual DRG, future recalibrations would take into consideration such changes and automatically adjust the payment levels.

• Large urban location.

Consistent with the prospective payment system for operating costs, the September 1, 1987 capital final rule provided for separate standardized amounts for hospitals located in urban and rural areas. Subsequently, the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) provided for a higher update factor for hospitals located in large urban areas than in other urban areas and thereby established three standardized amounts under the prospective payment system for operating costs. Large urban areas are defined as those metropolitan statistical areas (MSAs) with a population of more than 1 million (or New England County metropolitan statistical areas (NECMAs) with a population of more than 970,000). Beginning with discharges on or after April 1, 1988 and continuing to FY 1995, the Congress has also established higher update factors for rural hospitals than for urban hospitals. The differential updates have had the effect of substantially reducing the differential between the rural and other urban standardized amounts. Section 4002(c) of Pub. L. 101–508 provides for the elimination of the separate standardized amounts for rural and other urban hospitals in FY 1995 by equating the rural standardized amount to the other urban standardized amount. The separate standardized amount for large urban hospitals would continue. Currently, the large urban standardized amount is 1.6 percent higher than the standardized amount for hospitals located in other urban areas.

Our regression analysis indicated that large urban and other urban hospitals have higher capital costs, with regression coefficients of .087 and .069 respectively. This would imply that the Federal payment rate for large urban and other urban hospitals should be approximately 8.7 percent and 6.9 percent higher, respectively, than the Federal payment rate for rural hospitals.

To assess the appropriateness of the differentials indicated by the regression equation, we simulated payments on this basis together with the other payment adjustments that we are proposing. We compared the payments to FY 1988 capital costs per case. This comparison shows what the redistribution of payments would have been if payments had been based on 100 percent of the Federal rate in FY 1988 and aggregate payments equaled 100 percent of reasonable cost. It provides an indication of what the impact of the prospective payment system would be after the transition (when payment would be based on 100 percent of the Federal rate) assuming no behavioral changes. We also compared the payments to FY 1988 capital costs per case after standardization for the capital age and financing variables and occupancy rate. To the extent the Federal rate should be independent of capital timing and financing decisions, this comparison is a more appropriate indicator of the long-run impact of payment based on 100 percent of the Federal rate.

Under either basis of comparison, we found that we would underpay rural hospitals relative to other hospitals if

we were to adopt the differentials indicated by the regression equation. Moreover, we believe payment differentials of the magnitude suggested by the regression equation would be contrary to the direction taken by the Congress in section 4002(c) of Public Law 101–508 to phase out by FY 1995 the separate standardized amounts for rural and other urban hospitals under the prospective payment system for operating costs.

When we simulated a payment system with no payment differential between urban or rural location, we determined that we would underpay large urban hospitals and overpay rural hospitals relative to their actual capital costs per case. Based on this comparison, we concluded that some payment adjustments for large urban hospitals is appropriate. However, the results of the payment simulation comparing a payment system with no payment differential to standardized costs per case indicated we would slightly overpay urban hospitals and underpay rural hospitals relative to standardized costs. This suggests that the large urban differential should be relatively small. Therefore, we examined the impact of a 1.6 percent higher payment to large urban hospitals with no distinction between rural and other urban hospitals. This is the same as the differential between large urban and other urban hospitals in the prospective payment system for operating costs that will continue after the separate rates for rural and other urban hospitals are phased out. The 1.6 percent also closely approximates the percentage differential between the large urban and other urban payment rate suggested by the difference between the coefficients for large urban and other urban hospitals (that is, .087 and .069) in the regression equation for capital costs per case. We found that the 1.6 percent differential strikes a balance between the impact based on actual costs per case and the impact based on standardized costs per case.

The following tables display the results of our payment simulations.

Simulation of Urban Differential Payments Assuming Payment Based on 100 Percent Federal Rate

TABLE 1—PERCENTAGE CHANGE FROM ACTUAL COSTS PER CASE

	No.	PPS–5 actual cost per case	Percentage Change From Actual Cost Per Case		
			8.7% LU, 6.9% OU, Add-on	1.6% LU, Add-on	No urban Add-on
All hospitals	1906	$489.18	0.00	0.00	0.00
Large Urban	422	568.05	−0.04	−1.26	−2.20
Other Urban	533	505.65	0.88	−0.26	0.36
Rural	951	350.02	−2.05	3.52	4.17

TABLE 2—PERCENTAGE CHANGE FROM COST PER CASE STANDARDIZED FOR CAPITAL AGE AND FINANCING VARIABLES

[Percentage Change from Standardized Cost Per Case]

	No.	PPS–5 standardized average cost per case	8.7% LU 6.9% OU Add-on	1.6% LU add-on	No urban add-on
All hospitals	1906	$489.18	0.00	0.00	0.00
Large urban	422	553.16	2.65	1.40	0.43
Other urban	533	502.53	1.51	0.35	0.99
Rural	95	376.32	−8.89	−3.71	−3.11

LU = Large Urban
OU = Other Urban.

We are proposing that hospitals in large urban areas receive a 1.6 percent add-on to the Federal capital payment rate. We believe that the results of our regression analyses and the payment simulations support the 1.6 percent differential. Moreover, it is consistent with the changes made by Public Law 101–508 with respect to the prospective payment system for operating costs.

• Local Cost Variation.

In the 1987 final rule, we provided that we would adjust the fixed capital portion of the Federal payment rate by a construction cost index that measured relative output costs (the cost of a finished structure per square foot). Since then, the Center for Health Economics Research developed under a cooperative agreement with HCFA a construction index based on relative input prices (cost per unit of materials and labor). (A copy of the final report entitled: Refinement of HCFA's Area Cost Index—Final Report, dated March 16, 1989, may be obtained from the National Technical Information Services (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (1–800–336–4700) Report No. PB–89–191–l91). Although we believe the revised construction cost index addresses many of the concerns that were raised regarding the September 1, 1987 construction cost index (52 FR 33190), our regression analysis indicated that the hospital wage index was a better predictor of capital costs than the revised construction cost index. Moreover, the hospital wage data are more readily available to the public than the proprietary data used to develop the construction cost index. Therefore, we are proposing to use the hospital wage index that is applicable to hospitals under the prospective payment system for operating costs to develop the geographic payment adjustment for capital. The wage index is described in the September 4, 1990 final rule (55 FR 36035) and in the interim final rule with comment period, which was published in the **Federal Register** on January 7, 1991 (56 FR 568), setting forth changes in the hospital wage index effective January 1, 1991 that were required by section 4002 of Public Law 101–508. Separate wage index values have been established for each Metropolitan Statistical Area or New England County Metropolitan Area and for the rural

counties within a State. Special rules apply to the wage index applicable to hospitals in certain geographic areas that are deemed to be located in another geographic area under sections 1886(d)(8) and (d)(10) of the Act. The wage index that would be applicable to discharges occurring on or after October 1, 1991 would be based on FY 1988 wage data and would be set forth in the final rule for the FY 1992 prospective payment rates for operating costs.

As expected, the regression equation results indicate that the wage index has a smaller effect on capital costs than it does on operating costs. The regression indicated that there is a 4.6 percent increase in capital costs per case for every 10 percent increase in the hospital wage index (WI) value. Instead of adjusting a portion of the Federal capital payment by the hospital wage index, we are proposing to develop a geographic adjustment factor that would be determined consistent with the regression results and applied to the entire Federal capital payment. It would also reflect the 1.6 percent add-on for hospitals located in large urban areas discussed above. We propose to calculate the geographic adjustment factor as follows:

GEOGRAPHIC ADJUSTMENT FACTOR

Hospital location	Formula
Rural and Other Urban Areas.	$WI^{.6}$
Large Urban Areas	$(1.016)(WI^{.6})$.

The proposed geographic adjustment factors are based on the hospital wage index values effective for discharges occurring on or after January 1, 1991 that were published in the **Federal Register** on January 7, 1991 (56 FR 568). The proposed factors are set forth in Table 2 of this document.

The September 1, 1987 capital final rule provided that a cost-of-living adjustment would be made to the moveable equipment portion of the Federal capital payment for hospitals located in Alaska and Hawaii. This adjustment paralleled the cost-of-living adjustment that is made to the nonlabor-related portion of the prospective payment for operating costs. We have examined the FY 1988 capital costs per case of hospitals located in Alaska and Hawaii and have concluded that an additional payment adjustment for these hospitals is not warranted. Although the average PPS–5 capital costs per case of Alaska hospitals ($1,192) is significantly higher than the national average ($533), further examination indicates this effect is solely attributable to the two urban hospitals with capital costs per case of $1,713 and $1,577. The average capital cost per case for the remaining Alaska hospitals ($529) is comparable to the national average.

However, there is a wide distribution of capital costs per case among these hospitals, and the Hawaii hospitals with high capital costs per case fall within the range of capital costs per case of hospitals located in the Pacific region. The median capital cost per case ($468) for Hawaii is comparable to median capital cost per case ($486) of other hospitals located within the Pacific region. Since there does not appear to be a systematic difference in capital costs per case that would distinguish the Alaska and Hawaii hospitals from other hospitals, we are not proposing to make an additional payment adjustment for hospitals located in these two States.

• Disproportionate share of low income patients.

Our regression equation indicated that for urban hospitals with more than 100 beds, the disproportionate share percentage of low income patients has an effect on capital costs per case. Consistent with our regression equation, we would apply the disproportionate share adjustment on a curvilinear basis.

We are proposing that urban hospitals with 100 or more beds receive an additional payment equal to $((1 + DSHP)^{0.4176} - 1))$. (This formula is consistent with the specification of the DSHP in log form in the regression equation.) There would be no minimum disproportionate share percentage required to qualify for the payment adjustment. A hospital would receive approximately a 4.2 percent increase in payments for each 10 percent increase in its disproportionate share percentage. This method is similar to the one used for the indirect medical education adjustment on the operating side.

Since we did not find a disproportionate share effect on the capital costs of urban hospitals with fewer than 100 beds or on rural hospitals, we are not proposing to make a disproportionate share adjustment to the capital payment to these hospitals.

• Indirect medical education.

We are not proposing to make an adjustment for the indirect costs of medical education because the results of all our capital regressions consistently indicated that the teaching variable was negative and statistically significant. The negative coefficient indicates that the other payment variables more than fully account for the higher capital costs of teaching hospitals and that a payment adjustment for teaching activity is not warranted.

Step 3—Standard Federal Payment Rate

When the prospective payment system for operating costs was established, the 1981 operating costs per case were standardized for the payment adjustments (other than outliers). "Standardization" involves dividing each hospital's cost per discharge by a factor that incorporates the payment adjustments for each individual hospital prior to computing an average cost per discharge used to compute the basic payment rate, or standardized amount. Standardization was previously thought to be necessary to establish a basic payment rate for each payment group (regional, urban, or rural) that could then be adjusted up or down for individual hospitals based on their respective payment adjustments. We no longer believe standardization is necessary to determine the basic payment rate. Instead, it is possible to determine by formula a standard payment rate that, after applying the payment adjustments, will result in the desired level of aggregate payments.

There are only two requirements that must be met in a prospective payment system. The first requirement is that the payments to each hospital must be in the desired relation to one another. These relationships are independent of the level of the standard Federal capital payment rate:

$$P_i/P_j = (R_oA_i)/(R_oA_j)$$

P_i and P_j represent prospective payment system payments to the ith and jth hospitals; A_i and A_j represent the combined payment adjustments for the ith and the jth hospitals; R_o is the basic prospective payment system payment rate. Clearly, P_i/P_j does not depend on the value of R_o. We have used regression analysis and payment simulations to establish the appropriate payment adjustments that will determine the relative relationships among hospitals.

The second requirement is that aggregate payments to all hospitals must equal some desired target payment level. For purposes of developing the Federal capital rate (before taking budget neutrality into account), the payment target is the estimated FY 1992 Medicare inpatient capital costs. On a per case basis, the standard payment rate, after applying the payment adjustments, should result in an average payment per case equal to the estimated FY 1992 average capital cost per case. If the aggregate payment target is T, then multiplying R_o by the ratio of T to the aggregate payments (ΣR_oA_i) that would result if R_o equaled the FY 1992 average

capital cost per case will yield the desired aggregate payments:

$$\Sigma_i \left(\frac{T}{\Sigma R_o A_i} \times R_o \right) \left(A_i \right) = T \times \frac{\Sigma R_o A_i}{\Sigma R_o A_i} = T$$

The payment simulation model can be used to determine the ratio of T to the aggregate payments before adjustment ($\Sigma R_o A_i$). This process is similar to the method used in budget neutrality calculations under the prospective payment system for operating costs.

In the September 1, 1987 capital final rule, we standardized each hospital's capital costs per discharge for the payment adjustments and computed standardized amounts for capital. In this proposed rule, to simplify the rate construction process and better assure that the appropriate budgetary effects of future payment adjustment formula changes are realized, we would determine by formula a standard payment rate that, after taking into account the payment adjustments discussed in Step 2 above, would result in aggregate payments equal to aggregate FY 1992 Medicare inpatient capital costs.

To calculate the standard Federal payment rate before adjusting for outlier and exception payments and budget neutrality, we applied the payment adjustments to the updated base-year national average capital cost per case. In applying the payment adjustments, we used the most recent hospital-specific data available for case mix and disproportionate share. We trended each hospital's case mix forward to FY 1992 by assuming a 2 percent annual increase in case mix. The case-mix index has risen steadily since the advent of the prospective payment system for operating costs. If we did not recognize the case mix increase in our calculation, the standard payment rate would be inflated and FY 1992 payments would exceed predicted levels. We based the level of the geographic adjustment factor on the hospital wage index that is effective for discharges occurring on or after January 1, 1991. For each hospital, we applied the payment adjustments (case mix, disproportionate share, and geographic adjustment factor) applicable for that hospital to the FY 1992 national average capital cost per case and multiplied by the number of discharges for the hospital. We summed the results to determine aggregate payments based on the national average cost per case and the payment adjustments. We determined that the ratio of estimated FY 1992 Medicare capital costs to the aggregate payments based on the national average cost per case and the payment adjustments was 0.7180. Therefore, we multiplied the national average cost per case by 0.7180 to determine the standard Federal payment rate. We made this adjustment in lieu of standardizing each hospital's capital cost per case and determining a national standardized amount. Prior to making the adjustments for exceptions and budget neutrality, aggregate payments based on the standard Federal payment rate and the payment adjustments would equal estimated FY 1992 Medicare capital costs.

Step 4—Additional Payment for Outlier Cases

Under the prospective payment system for operating costs, the standardized amounts are reduced by 5–6 percent to pay additional amounts for extraordinarily costly or long length of stay cases. For FY 1991, a case qualifies as a cost outlier if the cost for the case (after standardization for the indirect teaching adjustment and disproportionate share adjustment) is greater than the larger of two times the Federal rate for the case (that is, the standardized amount adjusted for DRG weight and wage index value) or $35,000 (adjusted for the wage index). Except in the DRGs for burn cases, the cost outlier payment equals 75 percent of the difference between the standardized cost and the threshold. For burn cases, the outlier payment equals 90 percent of the difference.

A case qualifies as a day outlier if the length of stay is greater than the mean length of stay for the DRG plus the lesser of three standard deviations of the mean length of stay or 29 days. The day outlier payment is equal to 60 percent of the average per diem payment for the DRG. A case that qualifies as both a day and a cost outlier will be paid according to which methodology yields the higher payment. The indirect teaching and disproportionate share adjustments are applicable to outlier payments.

Section 1886(d)(5)(A)(iv) and section 1886(d)(9)(D)(i) of the Act direct that outlier payments under the prospective payment system for inpatient operating costs may not be less than five percent nor more than six percent of total payments projected to be made based on the prospective payment rates in any year. Section 1886(d)(3)(B) requires that the standardized amounts be reduced by the proportion of estimated total DRG payments attributable to estimated outlier payments. In FY 1991, we estimate the outlier payments will constitute 5.2 percent of total DRG payments.

Our regression results indicate that hospitals with higher proportions of outlier payments have higher capital costs; therefore, we propose to provide for additional payments to be made for extraordinarily costly or atypically long length of stay cases. We would amend the current outlier policy (in 42 CFR part 412, subpart F) to include capital payments for outlier cases.

We believe that it is appropriate to establish a unified outlier payment methodology for operating and capital costs. Thus, we would establish a single set of thresholds that would be used to identify outlier cases for both operating and capital payments, and we would make the percentage reduction in the standard capital payment rates for the estimated value of outlier payments the same as the aggregate percentage reduction in the operating standardized amounts. In this proposed rule, we have assumed 5.1 percent of total Federal capital payments would be for outlier payments (consistent with the outlier payment percentages in the September 4, 1990 final rule) and have reduced the Federal rate accordingly. We would revise the outlier thresholds and the outlier reduction factors as necessary to reflect the unified outlier payment methodology in conjunction with the final rule setting forth the FY 1992 payment rates for the prospective payment system for operating costs.

We are proposing that payment for capital-related day outliers (extended length-of-stay cases) be determined based on the same provisions in effect for noncapital-related day outliers (§ 412.82). We are proposing that payment for capital-related cost outliers (extraordinarily high-cost cases) be determined based on both capital-related and noncapital-related costs and that the same marginal cost factors be

used. We would amend § 412.84 to provide that payment for high capital cost cases would occur only when both the capital-related and noncapital-related costs exceed the cost outlier threshold. We believe it would be inappropriate to make cost outlier payments for high capital cost cases in which total capital-related and noncapital-related costs are below the cost outlier threshold. The outlier payment would be payable only for the portion of the capital payment that is based on the Federal rate.

Step 5—Exceptions Reduction Factor

As explained in section C below, we propose to reduce the Federal rate (and the hospital-specific rate) by an exceptions reduction factor equal to the estimated additional payments that will be made under the exceptions policy.

In FY 1992, we estimate the additional payments will equal 6.92 percent of aggregate payments based on the Federal rate and the hospital-specific rate. Therefore, we would multiply the standard Federal rate by an exceptions reduction factor of 0.9308 (1.00–0.0692).

Step 6—Budget Neutrality Adjustment Factor

As explained in section D, we propose to adjust the Federal rate (and the hospital-specific rate) each year by a budget neutrality adjustment factor so that aggregate payments for capital in FY 1992 through FY 1995 are equal to 90 percent of what would have been payable each year on a reasonable cost basis. In FY 1992, the budget neutrality factor will increase the standard Federal rate. We would multiply the standard Federal rate by a budget neutrality adjustment factor of 1.1088.

B. Determination of Basic Hospital Inpatient Capital Payments During Transition

Before implementing full Federal rate payments for hospital inpatient capital-related expenditures, we would provide for a 10-year transition period to allow hospitals adequate time to adjust to the new payment system. The transition period for all hospitals subject to the prospective payment system would commence with the hospital's first cost reporting period beginning on or after October 1, 1991, and extend through the hospital's last cost reporting period beginning before October 1, 2001. Payments during the transition period would vary among hospitals, generally depending on the relationship between their hospital-specific rate and the Federal rate.

Because the transition period payments would be based in part on actual allowable capital costs, we would require strict adherence to the rules for classifying, allocating, and determining the reasonable cost of capital-related costs under the Medicare principles of payment that implement section 1861(v) of the Act and 42 CFR part 413, subpart G. We would seek to ensure that these principles are followed consistently during the pertinent cost reporting periods in the determination of the hold-harmless amount, the hospital-specific rate, and capital exceptions payments during the transition period.

An intermediary's determination of the hospital-specific rate and the payment amount for old capital would be subject to review and appeal under the provisions at 42 CFR part 405, subpart R, Provider Reimbursement Determinations and Appeals. In addition, we would revise the hospital-specific rate and the determination of old capital costs retroactively to reflect revisions in the amounts recognized as allowable for the hospital's base year as a result of administrative or judicial actions affecting the base-period notice of amount of program reimbursement. Any retroactive adjustments would also result in an adjustment to any hold-harmless or exceptions payments the hospital may have received.

Hospitals with 52–53 week fiscal year periods ending September 25–30 of the calender year would be deemed to have Medicare cost reporting periods beginning October 1 in each such calendar year for capital payment purposes in order to assure a commensurate transition for all hospitals. We would apply this approach to such hospital cost reporting periods consistent with the direction provided by section 5(a) of the Emergency Extension Act of 1985 (Pub. L. 99–107) as amended by section 9307(d) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509). Section 9307(d) of Public Law 99–509 similarly adjusted the related cost reporting periods and Federal fiscal years for the prospective payment system for inpatient hospital operating costs. This policy would initiate and maintain consistent payment levels between cost reporting periods and their related Federal fiscal years for purposes of the prospective payment system for capital-related costs.

Step 1—Determination of the Hospital-Specific Rate

The base period used to determine the hospital-specific rate would be the hospital's latest 12 month cost reporting period ending in FY 1990 (that is, after September 30, 1989 and on or before September 30, 1990). If the hospital's last cost reporting period ending in FY 1990 is for less than 12 months, the fiscal intermediary would use a combination of cost reporting periods ending on or before September 30, 1990 that cover at least 12 months. Fiscal intermediaries would determine each hospital's FY 1992 hospital-specific rate as follows:

a. *Base Year Allowable Cost Per Discharge.* We would divide the hospital's total allowable Medicare inpatient capital-related costs in the base year by the number of Medicare discharges in the base year to determine the base year allowable capital cost per discharge. A discharge is defined as the formal release of a patient, including death, but excluding newborns and patients who are dead on arrival. Under § 412.4, a transfer to another acute care hospital is not considered a discharge for DRG payment purposes since special payment rules apply to these cases. However, for cost reporting purposes and for purposes of determining the hospital-specific rate, all transfers count as discharges in calculating the hospital's allowable base year cost per discharge.

b. *Case-Mix Adjustment.* We would divide the base year allowable capital cost per discharge by the hospital's case-mix index for its base year cost report. The most recent case-mix data available, which is for the Federal fiscal year 1989 (October 1, 1988 through September 30, 1989) was published in the September 4, 1990 final rule (55 FR 36081) and is not being republished as part of this document. The final rule will include hospital case-mix indexes for cost reporting periods ending in FY 1990.

We would standardize the hospital-specific rate for case mix in the base year because individual case complexity will be taken into account in determining the hospital-specific portion of the payment for a discharge by multiplying the hospital-specific rate by the DRG weight. By doing so, the hospital-specific payments will reflect any changes in case-mix occurring between the base year and the payment year.

c. *Update Factor.* We would update the resulting case-mix adjusted base period costs per discharge to apply to discharges occurring in FY 1992. Although the prospective payment system for capital will be effective by cost reporting period beginning dates, we propose to update the hospital-specific rate in the future on a Federal fiscal year basis to coincide with the update of the Federal capital payment rate and to maintain a consistent relationship between the hospital-specific rate and the Federal rate

throughout the transition. This will facilitate the comparison of a hospital's hospital-specific rate and the Federal rate for purposes of determining the applicable transition payment methodology. It will also provide for a consistent match between the inflation factor used to update the hospital-specific rate and the period covered by the rate.

We propose to update the base period costs per discharge from the mid-point of the hospital's base cost reporting period to March 31, 1992 (the mid-point of FY 1992).

The update factor would be based on an actuarial estimate of the increase in Medicare inpatient capital costs per discharge adjusted for case mix change. Part of the increase in capital costs is attributable to increases in case-mix. If we did not account for case mix change, we would be paying for case mix twice, once through the higher update factor and again in higher FY 1992 case mix. The rates of increase are as follows:

ESTIMATED INCREASE IN MEDICARE CAPITAL COST PER DISCHARGE (PERCENT)

Federal fiscal year	Total increase	Increase in case-mix	Case-mix adjusted increase
FY 1989	10.55	2.49	[1] 7.86
FY 1990	7.25	[2] 0.77	6.43
FY 1991	6.03	2.0	3.95
FY 1992	6.80	2.0	4.71

[1] Calculated by dividing 1.1055 by 1.0249.
[2] Takes into account 1.22 percent reduction in DRG weights.

To compute the update factor, the case mix-adjusted inflation rates are compounded using the number of months in each calendar year. Based on the case-mix adjusted inflation rates, we propose to update the hospital's base period costs per discharge for inflation using the following update factors:

COMPOUNDED UPDATE FACTORS FOR HOSPITAL-SPECIFIC RATE

12-month base year cost reporting period ending	Update factor
October 31, 1989	1.16101
November 30, 1989	1.15371
December 31, 1989	1.14646
January 31, 1990	1.13926
February 28, 1990	1.13210
March 31, 1990	1.12623
April 30, 1990	1.12040
May 31, 1990	1.11459
June 30, 1990	1.10882
July 31, 1990	1.10308
August 31, 1990	1.09736
September 30, 1990	1.09168

If a hospital's base year 12-month cost reporting period ends on a day other than those listed above, the intermediary would use the nearest whole month to the date on which the hospital's cost reporting period actually ends. If a hospital's base year cost reporting period is for other than 12 months, the update factor would be computed from the midpoint of the cost reporting period to March 1, 1992.

d. *Exceptions Reduction Factor.* As explained in section C below, we propose to reduce the hospital-specific rate (and the Federal rate) by an exceptions reduction factor equal to the estimated additional payments under the exceptions process. In FY 1992, we estimate that additional payments will equal 6.92 percent of aggregate payments based on the Federal rate and the hospital-specific rate. Therefore, we would multiply the hospital-specific rate by an exceptions reduction factor of .9308 (1–.0692).

e. *Budget Neutrality Adjustment.* As explained in section D below, we propose to adjust the hospital-specific rate (and the Federal rate) each year by a budget neutrality adjustment so that aggregate payments for capital in FY 1992 through FY 1995 are equal to 90 percent of what would have been payable on a reasonable cost basis that year. In FY 1992, the budget neutrality adjustment would increase the hospital-specific rate. We would multiply the hospital-specific rate by a budget neutrality adjustment factor of 1.1088.

The resulting amount as determined by the fiscal intermediary would be the hospital-specific rate used for each hospital's capital transition payment calculation.

Step 2—Identification of Old Capital

We would use a hospital's lastest cost reporting period ending prior to October 1, 1990 as the base period to establish a cutoff point to distinguish old capital from new capital to establish the capital hold-harmless payment amount. This is, old capital would be defined as an asset that has been acquired and reported on the Medicare cost report for the hospital's latest cost reporting period ending on or before September 30, 1990.

Although practically any point in time between October 1, 1983 and the implementation of the capital prospective payment system could be selected to distinguish between old capital and new capital, we believe our definition is both reasonable and the most practical approach for several reasons. First of all, we note that hospitals have had advance notice that capital would be paid for on a prospective basis. Section 601(a)(2) of the Social Security Amendments of 1983 (Pub. L. 98–21) amended section 1886(a)(4) of the Act to provide that capital-related costs would be excluded from the prospective payment system only with respect to costs incurred prior to cost reporting periods beginning prior to October 1, 1986. We also note that section 601(a)(3) of Public Law 98–21 indicated Congressional intent that in considering the implementation of prospective payments for capital-related costs, costs for capital projects that were obligated on or after the effective date of the system "may or may not be distinguished and treated differently" from costs for projects for which expenditures were obligated before the effective date of capital prospective payments. Thus, hospitals were put on notice that capital obligated before the effective date of capital prospective payments would not necessarily receive special treatment.

Conference committee language accompanying section 4006(b)(1) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203), which amended section 1886(g)(1)(A) of the Act to require the Secretary to establish a prospective payment system for capital-related costs in FY 1992, included a further cautionary statement to hospitals planning capital expenditures. The conference committee report on this provision specifically notes that at that time (FY 1992) "* * * hospitals will have had more than eight years since Congress originally indicated its intent in 1983 to reimburse for capital costs on a prospective basis" (H.R. Rep. No. 495, 100th Cong., 1st Sess. 535 (1987)).

As a practical matter, we believe that an earlier cutoff than the cost reporting period ending in FY 1990 for old capital could be detrimental to hospitals and that it would be administratively difficult to reconstruct expenditures for an earlier fiscal year and for the intervening years. Selection of a cutoff point subsequent to publication of this proposal, on the other hand, could serve as an incentive for hospitals to increase expenditures with the assurance that the cost would be paid under the hold-harmless provision.

We recognize that there may be a time lag of several years between the date a hospital may become obligated for higher capital expenditures and when the asset is put into operation and included in the Medicare cost report. This is particularly true for major projects such as plant renovation or expansions. Nevertheless, we are proposing to extend the hold-harmless provision only to obligated capital that was put in use for patient services before the close of cost reporting period ending on or before September 30, 1990.

Our reasons for limiting the old capital definition to only those assets that are included on the base period Medicare cost report include the following:

- The issue of whether capital is obligated is a grey area. We were unable to develop criteria for determining whether capital has been obligated that could be readily administered equitably and uniformly across fiscal intermediaries and that would not be subject to dispute.
- Under the aggregate payment constraints for the capital prospective payment system, any increase in hold-harmless payments (such as those resulting from a more lenient definition of old capital) would require lower payments for new capital.
- We do not have data on Medicare inpatient capital costs for capital projects that have been obligated but have not been put in use for patient services. To define these projects, some of which may never be completed and put into service, as old capital, would complicate our projections of the amount of payments under the hold-harmless methodology and the budget neutrality calculations required by Public Law 101–508 for the first four years of the transition.

To partially address the concerns of those hospitals that have made capital commitments that would not be eligible for reasonable cost payment under the hold-harmless provision, we propose to pay a hospital whose hospital-specific rate is below the Federal rate, but whose FY 1992 costs are above the Federal rate (prior to adjustment for exceptions or outliers), on the basis of whichever payment methodology is most advantageous to the hospital in FY 1992. This special rule would only be available to hospitals for FY 1992. The FY 1992 determination would establish which payment methodology would be applicable throughout the rest of the transition. Although new capital acquired between FY 1990 and FY 1992 would not be eligible for a hold-harmless payment, the impact of those acquisitions would be reflected in the determination of the applicable payment methodology. Further, we note that if future capital obligations result in substantial capital costs after the base period, an "exception" payment would be available if the necessary criteria are met regardless of whether the hospital is paid under the fully prospective or hold-harmless payment methodology.

We believe that our policy to use a base period to establish old capital under this proposed capital payment rule sets the proper balance among competing concerns over this issue. However, we are specifically interested in receiving public comment on our definition of old capital and alternative suggestions that would broaden the definition to include obligated capital. Commenters favoring consideration of obligated capital under the hold-harmless provision should suggest readily applied national criteria that could be used by fiscal intermediaries in an equitable manner to determine if capital has been obligated.

A definition that relates the criteria to an enforceable contract, for example, appears problematic because the criteria would vary according to state law and would involve the intermediary in legal determinations. On the other hand, a definition that did not require a binding contract would be subject to abuse. Such criteria should also specify the entities to which the obligations should be made before the capital would be considered obligated (for example, construction and/or financing) to qualify and the extent to which penalty clauses should influence the determination.

An alternative approach to defining obligated capital would be to require that the hospital demonstrate financial commitment by incurring substantial expenses, such as $750,000, related to the capital project by a date certain. This approach would limit the expanded definition of old capital to major capital projects.

Either approach would need to include an appropriate cut-off date that would preclude anticipatory actions by hospitals to obligate capital solely for purposes of favorable treatment under the prospective payment system.

Step 3—Determination of the Hold-Harmless Payment Amount

Subject to a budget neutrality adjustment, (see section D below), we propose to pay hospitals under the hold-harmless payment methodology for 90 percent of the Medicare reasonable costs for depreciation and interest expenses related to old capital. The depreciation and interest costs related to old capital for each year of the transition would be determined on an interim basis based on cost-reporting data for the most recent cost reporting period for which such data are available, adjusted to estimated current year levels. Subsequently, once audited capital cost and discharge data are available for the applicable fiscal year, a final determination of the payment amount for old capital costs would be made. Thus, for FY 1992, an interim determination of FY 1992 old capital costs would be made based on cost-reporting data for the base period cost reporting period adjusted to estimated FY 1992 levels. Subsequently, a final determination would be made, and applied retrospectively, based on audited FY 1992 capital cost and discharge data.

In order to determine the amount of old capital costs for purposes of the hold-harmless payment, Medicare fiscal intermediaries would determine the amount of each hospital's Medicare inpatient capital-related costs and categorize these costs as depreciation costs, capital-related interest costs, or other capital costs. Other capital costs include costs other than interest and depreciation that are defined as capital-related costs under § 413.130 of the current regulations, including all lease arrangements, rental agreements, insurance, taxes, license, royalty fee and related organization capital-related costs for depreciable assets that are not maintained on the premises of the hospital. (Any depreciable asset that is maintained on the hospital's premises for the use of the hospital's patients but is kept on the related organization's books for recordkeeping purposes only may qualify as old capital if the asset was first reported on the hospital's Medicare cost report for a cost reporting period ending on or before September 30, 1990.) For depreciable assets that were reported on the hospital's Medicare cost report ending on or before September 30, 1990, the allowable depreciation and interest costs related to the assets in a given transition year would be eligible for the hold-harmless payment in that year. As the old capital assets are retired, the amount of the hospital's hold-harmless payment would decline. In this regard, we note that betterment and improvement costs and replacement costs for old capital occurring subsequent to the base period would be considered new capital costs.

a. *Cost Reporting Requirements.* Beginning with cost reporting periods ending in FY 1991, hospitals would be required to separately maintain, and fiscal intermediaries to verify, the identity of the old capital assets and their related depreciation and interest expenses and to track scheduled depreciation and remaining interest on debt related to the old capital assets less any appropriate offsets for interest income. Similarly, new capital acquisitions and expenses, including all other capital costs (insurance, taxes, lease, rental and related organization capital costs), would be separately identified and maintained.

Hospital cost reporting forms would be revised for future periods to provide for the following:

- Separate identification of interest and depreciation by old and new capital categories.
- Separate identification of other capital costs.
- Identification of all new acquisitions, sales and retirement of capital assets.

b. *Interest Expense.* Interest expense, as described in § 413.153, is an integral part of capital costs. Under the current Medicare capital payment system (reasonable costs), it is important for hospitals to distinguish operating interest from capital interest appropriately since interest on funds borrowed for operating expenditures is included under the inpatient hospital prospective payment system, and therefore is not a passthrough, while interest on funds borrowed for capital expenditures is paid for on a reasonable cost passthrough basis. We propose to continue this policy without change throughout the transition period. We would apply this policy and Medicare's principles of reasonable cost payment to establish the amount of capital interest expense and the appropriate allocation between new and old capital for purposes of determining the old and new capital portions of a hospital's prospective capital payment during the transition period.

We would determine capital interest expense based on current regulations (§ 413.153) and program guidelines (see § 3202.1 of the Provider Reimbursement Manual (HCFA Pub. 15–1)). To be allowed as a Medicare expense, interest must be:

- Supported by evidence of an agreement that funds were borrowed and that payment of interest and repayment of funds are required.
- Identifiable in the hospital's records.
- Related to the reporting period in which the costs are incurred.
- Necessary and proper for the operation, maintenance, or acquisition of the hospital's facilities.

To support the existence of a loan, the hospital must have available a signed copy of the loan contract, which should contain the purpose and pertinent terms of the loan. If the lender does not customarily furnish a copy of the loan contract, correspondence from the lender stating the pertinent terms of the loan would be acceptable. If interest expense has been determined to be allowable and the interest expense records are maintained physically away from the hospital's premises, for example, in a county treasurer's office, these records will be deemed to be those of the hospital. This is applicable when bond issues have been specifically designated for the construction or acquisition of hospital facilities and the financial records relative to the bond issue are maintained by some governmental body.

Once the allowable interest expense on capital indebtedness is determined, the interest expense is to be properly classified as either old or new capital expense. In determining the amount of interest expense that would be eligible for a hold-harmless payment, interest income would be offset against old capital interest expense on the basis of the ratio of old capital interest expense to total interest expense. If the interest expense solely relates to a debt instrument that was in effect for old capital in the base year cost reporting period, the allowable capital-related interest would be eligible for a hold-harmless payment.

When hospital financing activities result in a revision of the debt instrument applicable to old capital and/or a commingling of debt on old and new capital, the amount of interest expense related to old capital cannot exceed the amount of interest expense that would have been recognized prior to the commingling of debt or revision of the debt instrument. If the debt is commingled, the interest expense must be distributed between old and new capital based on the loan principal as it relates to each category. An example of this follows:

Assets covered under loan	Loan principal
Outstanding loan balance for old capital	$240,000
Newly financed additions or improvements	60,000
Total consolidated loan	300,000

Of the $300,000 total new outstanding principal amount, $240,000 is for the outstanding loan principal on the old assets, and $60,000 is for the loan principal on the betterments and improvements. Annual interest on the loan is at 10 percent and thus is equal to $30,000. The allocation to old capital and new capital is shown below:

Interest expense for Old Capital:

$$\frac{\$240,000}{\$300,000} \times \$30,000 = \$24,000$$

Interest Expense for New Capital:

$$\frac{\$60,000}{\$300,000} \times \$30,000 = \$6,000$$

Total Interest Expense = $30,000

However, the terms of the old loan on the old capital stipulated a 9 percent interest rate with the loan to be paid over a 10-year period for which five years have elapsed. If the new loan is to be paid over a 10-year period, only $21,600 ($240,000 x .09) in interest expense for the remaining five years that would have been recognized under the terms of the old loan would be recognized during the transition period.

If a loan is obtained to finance the purchase of a facility and equipment and the loan exceeds the asset value of the acquisitions, the interest expense on that portion of the loan in excess of the asset value would be considered general operating interest expense. The portion of the interest expense related to the financial assets must be distributed among the old and new financed assets. Again, the interest expense related to any old debt for old assets can not exceed the allowable interest expense that would have been allowable on the outstanding balance of the old debt.

There are some cases in which a hospital may, for a variety of reasons, undertake advance refunding (that is, replace existing debt prior to its scheduled maturity with new debt). The revenues and expenses associated with the advance refunding are treated in accordance with the principles set forth in section 233 of the Provider Reimbursement Manual. The allocation of interest expense on the new debt would be dependent upon the allocation used for the old debt and may not exceed the interest expense allowed under the terms of the old debt.

If a hospital has consolidated various individual debts through advance refunding, the interest expense on the new debt would be allocated to the appropriate accounts based on the old debt balances that were refinanced, not to exceed the interest expense that would have been allowable under the old debt.

We would develop further refinements and clarifications to the cost-finding rules and the cost reporting methodology through HCFA's administrative issuances system.

c. *Reevaluation of Assets.* Under section 1861(v)(1)(O) of the Act, for hospital acquisitions that involve reevaluation of assets, the new depreciation value of the purchased asset is limited to the lesser of the purchase price or the original book value of the asset. If the sale price of the asset exceeds the net book value, Medicare recaptures its proportion of previous depreciation payments from the seller.

Under the proposed rule, adjustments would be made for gains or losses only with respect to old capital for which a

hold-harmless payment is made. No adjustment would be made if payment is based on 100 percent of the Federal rate. The amount of the capital expenses after adjustments for gains and losses due to changes of ownership would be equal to the percentage of assets (based on book value) that are eligible for the hold-harmless payment.

Step 4—Determination of Applicable Capital Transition Methodology

To determine the payment methodology that would be applicable to a hospital throughout the transition period, a comparison would be made between its hospital-specific rate and the applicable Federal rate. The comparison would be made by adjusting the Federal rate for the disproportionate share and geographic adjustment factors applicable to the hospital and increasing the adjusted rate by the estimated value of outlier payment (5.1 percent). If the hospital-specific rate is higher than the Federal rate, the hospital would be paid under the hold-harmless payment methodology. If the hospital-specific rate is less than the Federal rate, the hospital would be paid under the fully prospective payment methodology, unless its FY 1992 allowable capital costs per case are higher than the Federal rate (after taking the payment adjustments for case mix, disproportionate share, geographic location and outlier payments into account). In the latter situation, the hospital would be paid under which of the two payment methodologies, exclusive of exception payments, would provide the higher payment amount in FY 1992. The hospital would continue to be paid under that same payment methodology for the remainder of the transition and could not in subsequent years switch from one payment methodology to the other. We note that this special rule for determining the transition payment methodology applicable to the hospital would have no effect on the determination of the hospital-specific rate or the determination of old capital costs. This payment provision is intended to benefit hospitals that complete capital projects between the end of their base year cost reporting period and FY 1992 which result in the hold-harmless methodology becoming advantageous even though the project would be classified as new capital.

The fiscal intermediary would advise each hospital in writing at least 30 days prior to the date of the hospital's first cost reporting period beginning on or after October 1, 1991 of its hospital-specific rate. In addition, based on a comparision of the hospital-specific rate with the applicable Federal rate, the intermediary would advise the hospital of the payment methodology under which it would be paid for the duration of the transition.

In the case of hospitals with hospital-specific rates lower than the Federal rate, the determination that payment will be made under the fully prospective methodology would be subject to change upon settlement of the FY 1992 cost report. This is because of the special rule allowing payment to these hospitals under the hold-harmless methodology if their FY 1992 allowable capital costs are higher than the Federal rate. After the hospital's FY 1992 cost report is reviewed and audited, the intermediary would provide written notice to each hospital being paid under the fully prospective payment method concerning the amount of its actual FY 1992 allowable capital costs and whether the hospital would now qualify for payment under the hold-harmless methodology for the transition period.

Any hospital dissatisfied with the determination of which payment methodology will apply during the transition would be able to challenge that determination by appealing the determination of the hospital-specific rate or the determination of its FY 1992 allowable capital costs under the provisions at 42 CFR part 405, Subpart R, Provider Reimbursement Determinations and Appeals.

Step 5—Payment Under the Fully Prospective Payment Methodology

Under the fully prospective payment methodology, a hospital will be paid a blend of its hospital-specific rate and the Federal rate, as follows:

FULLY PROSPECTIVE PAYMENT METHODOLOGY BLEND

Cost reporting period beginning in:	Hospital-Specific blend percentage	Federal blend percentage
Fiscal Year 1992	90	10
Fiscal Year 1993	80	20
Fiscal Year 1994	70	30
Fiscal Year 1995	60	40
Fiscal Year 1996	50	50
Fiscal Year 1997	40	60
Fiscal Year 1998	30	70
Fiscal Year 1999	20	80
Fiscal Year 2000	10	90
Fiscal Year 2001	0	100

Step 6—Payment Under the Hold-Harmless Payment Methodology

Under the hold-harmless payment methodology, a hospital would receive in each year of the transition the higher of:

- 90 percent of actual reasonable costs for depreciation and interest expenses on old capital in the transition year plus a hospital-specific payment for new capital (subject to a budget neutrality adjustment as explained in section D below); or
- 100 percent of the Federal rate (or the applicable blend of its hospital specific rate and Federal rate, if lower).

a. *Hold-Harmless Payment for Old Capital.* We would discount our payment for Medicare depreciation and interest costs of old capital (determined under step 3 above) by 10 percent in order to assure adequate funds to pay for the formation of new capital for both categories of hospitals. We note that this discount is less than the 15 percent reduction applicable to reasonable cost payments for Medicare inpatient capital costs under current law. If necessary, we would also adjust the payment by the budget neutrality adjustment factor (See section D below).

b. *Payment for New Capital.* Hospitals that receive a hold-harmless payment for old capital would be paid for new capital on the basis of the Federal capital rate applicable to all hospitals times the hospital's own ratio of Medicare inpatient new capital cost to total Medicare inpatient capital cost. New capital would be defined as all allowable Medicare inpatient capital-related costs other than depreciation and interest expense on old capital. The ratio could not exceed the national ratio of Medicare inpatient new capital cost to Medicare inpatient total capital cost as determined by HCFA for each Federal fiscal year. Our current estimate of the national ratio of new capital cost to total capital cost for the first two years of transition is the following:

FY 1992: 47.31 percent

FY 1993: 55.05 percent

c. *Comparison with Federal Rate.* As a hospital fully depreciates, retires, or sells old capital, its payments for old capital would decline and, at some point, payment based on 100 percent of th Federal rate would become more advantageous than the hold-harmless payment alternative. The hospital controls which payment alternative would be applicable through its capital decisions; the intermediary would make the actual determination regarding which payment alternative would result in higher payment. The comparison between the hold-harmless payment and 100 percent of the Federal rate would be made without regard to additional payments for exceptions. In addition, in any year of the transition, once a hospital is paid based on the Federal rate as a result of this comparison, the

hospital will continue to be paid based on the Federal rate for the remainder of the transition. The hospital will not be able to receive the hold-harmless payment for old capital in a subsequent cost reporting period of the transition.

d. *Payment Under the Special Rule.* In general, hospitals must have a hospital-specific rate that is higher than the Federal rate in order to be paid under the hold-harmless methodology. However, as previously discussed, there would be a special rule permitting hospitals whose hospital-specific rate is less than the Federal rate to be paid under the hold-harmless methodology if their FY 1992 allowable capital costs per case are higher than the Federal rate. We are providing that this particular group of hospitals would not be paid 100 percent of the Federal rate when it is no longer advantageous to receive the hold-harmless payment. Instead, they would be paid based on the applicable hospital-specific/Federal blend in effect under the fully prospective payment methodology.

e. *Interim Payment Determination Under the Hold-Harmless Methodology.* The hold-harmless payment amount for old capital costs for each year of the transition period would be based on that year's reasonable costs for depreciation and interest expenses on old capital (that is, assets that were reported on the hospital's Medicare cost report ending on or before September 30, 1990). Since this reasonable cost amount cannot be finally determined in advance of audit and settlement of a hospital' cost report, the payment amount for old capital costs would be estimated and paid on an interim basis until final data are available. Similarly, the ratio of the hospital's Medicare inpatient new capital costs to total Medicare inpatient capital costs cannot be determined until final settlement; thus, the payment for new capital would also be estimated and paid on an interim basis until final data are available.

Payment for old capital costs for the first year of the capital prospective payment system would be based on FY 1992 reasonable costs for depreciation and interest expenses on old capital. Since audited FY 1992 capital cost and discharge data would not be available at the time a hospital's capital-related costs first became subject to the capital prospective payment system, the intermediary would make an interim prospective payment to hospitals paid under the hold-harmless payment methodology until the pertinent cost report data are available and a final determination can be made.

We would have fiscal intermediaries use the capital cost data from the base year cost report to prepare an interim capital payment rate determination at the time a hospital begins its first cost reporting period on or after October 1, 1991. To determine interim capital payments timely, hospitals would have to provide fiscal intermediaries with documentation of the following FY 1990 Medicare inpatient capital costs:

- Total Medicare capital costs.
- Depreciation and interest costs for old capital.
- FY 1990 Medicare discharges.

This information would have to be submitted no later than 120 days prior to the date the hospital would begin its first cost reporting period on or after October 1, 1991 in order to allow fiscal intermediaries adequate time to verify the data and make the interim capital payment determination.

Medicare fiscal intermediaries would be responsible for making the following determinations:

- Review and verify the old and new capital cost data submitted for the base year by each hospital.
- Adjust the depreciation and interest expenses for old capital to FY 1992 levels based on hospital depreciation schedules and interest rate data.
- Estimate the payment ratio to be applied to the Federal rate for determining payment for new capital by subtracting the FY 1992 depreciation and interest expenses for old capital from total FY 1990 capital-related costs and dividing the difference by the total FY 1990 capital-related costs. A fiscal intermediary may also take into account hospital documentation of assets acquired from the base year through FY 1992 and their estimated Medicare depreciation and related annual interest costs or other changes in new capital costs since the base year.

The intermediary would then advise the hospital in writing of the interim payment rate determination at least 30 days prior to the date of the hospital's first cost reporting period beginning on or after October 1, 1991. At a hospital's request, the fiscal intermediary would make interim rate adjustments if necessary based on a hospital's submission of supporting documentation.

C. Exceptions Process

Under the authority of section 1886(g)(1)(B)(iii) of the Act, we propose to establish an exceptions process to assist hospitals that are financially disadvantaged during the transition period. The exceptions process would be available to hospitals paid under either the fully prospective payment methodology or the hold-harmless payment methodology that incur capital costs significantly in excess of their payments. In FY 1992, we propose that any hospital would be eligible for an additional payment under the exceptions process if its capital costs exceed 150 percent of the capital payments it would receive in the absence of the exceptions process. A hospital would be paid 75 percent of its costs in excess of the 150 percent threshold. As explained below, under certain circumstances, an urban hospital with 100 beds or more that has a disproportionate share percentage of at least 30 percent or a rural sole community hospital may receive a higher level of payment under the exceptions process.

The basic purpose of the exceptions policy is to assure continuing access to high quality care for Medicare beneficiaries. In this regard, we are particularly sensitive to the need to provide special protection to rural sole community hospitals, which serve as the sole source of care reasonably available to Medicare beneficiaires residing in their service area, and urban hospitals with more than 100 beds that serve a disproportionate share of low income population. We propose to establish a more lenient exceptions policy for these two classes of hospitals. The amount of the additional payment would be based on the relationship of current capital costs to the hospital-specific rate. If the hospital's capital costs per case are 3.0 times or more the hospital-specific rate, the hospital would be eligible for an additional payment equal to 75 percent of its Medicare inpatient capital costs in excess of 100 percent of payments. If the resulting capital costs per case are 1.5 times the hospital-specific rate or less, the hospital would be eligible for an additional payment equal to 75 percent of costs above 125 percent of payments. We would use a sliding scale for hospitals with cost-to-hospital-specific rate ratios between 1.5 and 3.0. The applicable percentage would be determined by applying a formula. It would be calculated by subtracting the hospital's ratio of Medicare inpatient capital costs per discharge to its hospital-specific rate from 3.0, multiplying the difference by 16.67, and adding the result to 100 percent.

The amount of the exceptions payment under this special provision could not exceed the difference between the hospital's total Medicare inpatient costs (operating, capital, and direct medical education costs) and its Medicare payments for Part A inpatient hospital services for the cost reporting period. A rural sole community hospital or urban hospital with more than 100

beds and a disproportionate share percentage of at least 30 percent would be paid under the general exceptions policy applicable to other hospitals if it would receive a higher payment under the general exceptions policy.

We would limit the aggregate amount of the exceptions payments to no more than 10 percent of the total capital payments made on a prospective basis, that is, 10 percent of the payments based on the hospital-specific and the Federal rate. We would reduce the hospital-specific and the Federal rate so that the aggregate reduction in a given year would equal the estimated amount of additional payments that would be made under the exceptions process in that year. In FY 1992, we estimate that the exceptions payments will constitute 6.92 percent of total prospective payments; therefore, we have multiplied the hospital-specific and Federal rate by an exceptions reduction factor of .9308 (1–.0692). If the payment formula we propose for FY 1992 would result in estimated exceptions payments that exceed 10 percent of total prospective payments in a subsequent year, we would raise the cost threshold to qualify for an exception or reduce the payment percentage so that the estimated payments under the exceptions process would equal 10 percent of total prospective payments in that year.

We note that with the two different transition payment methodologies we are proposing, a hospital would not qualify for an exception unless it has significant new capital expenditures. Since hospitals will have increasingly more discretion over the timing and financing of these expenditures as the transition progresses, we believe it is appropriate for the percentage of capital costs an individual hospital would receive under the exceptions process to decline in the later years of the transition. By the end of the transition, hospitals will have had ample time to adjust their capital spending and financing activities to the prospective payment system and an exceptions process should no longer be necessary. Since the Federal rate is independent of capital decisions, we would underpay a hospital in some years and overpay the hospital in other years relative to its costs in each of those years. It would not be appropriate to make an additional payment to a hospital because its costs exceed payments in a given year when the hospital may have received payments in excess of its costs in prior years and had an opportunity to accumulate additional funds for future capital acquisitions during those years. Therefore, we are proposing to establish an exceptions process only for the transition period. At the end of ten years, additional payments for exceptions would no longer be available. Since we would no longer protect hospitals that have costs that are significantly in excess of their Medicare payments in a given year, we invite public comment on this issue and suggestions regarding any special protections that should be extended to hospitals after the transition has ended.

D. Budget Neutrality Adjustment

Section 4001(b) of Public Law 101–508 amended section 1886(g)(1)(A) of the Act by adding a requirement that aggregate payments made each year in FY 1992 through FY 1995 for inpatient hospital services be reduced in a manner that results in savings equivalent to 10 percent of the amount that would have been payable on a reasonable cost basis for capital-related costs in that year. The statute provides the flexibility to achieve the savings through the design of the capital prospective payment system or through an adjustment to the standardized amounts for operating costs, or both. Since hospitals have been paid for capital based on their costs, they have less incentive to control their capital costs than their operating costs. We believe that the capital prospective payment system ought to generate at least 10 percent savings over reasonable costs. Currently, Medicare payments are subject to a 15 percent reduction so the 10 percent savings would actually result in a 5.9 percent increase in aggregate Medicare payments for inpatient capital costs. We propose to achieve the savings only through a reduction in payment for capital costs in FY 1992 through FY 1995. After the budget neutrality provision expires, payments would be made without regard to the budget neutrality adjustments that were applied during the first four years.

As explained in appendix A, we would use our actuarial model to determine the amount of the budget neutrality adjustment needed to assure that estimated payments under the capital prospective payment system are 90 percent of the estimated payments that would have been made on a reasonable cost basis assuming no change in spending for new capital acquisitions. If we determine a positive adjustment in payments is needed to achieve the appropriate aggregate payment level, we would apply a percentage increase to the Federal rate and the hospital-specific rate, but we would not make a positive adjustment to the hold harmless payment. We do not believe it is appropriate to pay more than 90 percent of reasonable costs for old capital since the costs were incurred when hospitals did not have an incentive to control capital costs. To the extent payments need to be increased to assure budget neutrality, the additional payments should be made available for new capital. To the extent payments need to be reduced to assure budget neutrality, we believe the reduction should be spread across payments for both old as well as new capital, and we would apply the negative adjustment to the Federal rate, the hospital-specific rate, and the hold-harmless payment.

In FY 1992 and FY 1993, we estimate that a positive adjustment will be required to achieve aggregate payments equal to 90 percent of the amount that would have been payable on a reasonable cost basis. Accordingly, we would increase the Federal rate and the hospital-specific rate by the following factors:

Fiscal year	Budget neutrality adjustment factor
1992	1.1088
1993	1.0933

We note that the budget neutrality adjustment factors would be determined each year independently of the adjustment made in prior years; that is, the budget neutrality adjustments would not be built permanently into the rates. The Federal rate and hospital-specific rate to which the budget neutrality adjustment would be applied in a given year would not incorporate prior budget neutrality adjustments. In the case of the hold-harmless amount, the payment in any year would be based on 90 percent of reasonable costs unless a negative adjustment were required in that year (regardless of whether negative budget neutrality adjustments were required in prior years).

Since the budget neutrality provision is applicable only for the first four years of the capital prospective payment system, we believe that it is more appropriate to remove the effect of prior year budget neutrality adjustments from the prospective rates before determining the current year adjustment than to build the budget neutrality adjustments permanently into the prospective rates. Through FY 1995, the choice between the one year application and a permanent application of the budget neutrality adjustment has no aggregate impact on program payments. For example, either approach in FY 1993 would result in a 1.4 percent reduction in relation to the FY 1992 payment rate

before updating for inflation: (1.0933/1.1088=.986; 1-.986=.014). However, the one year application permits us to implement the different budget neutrality policies for the prospective payments and the hold-harmless payments. If we were to determine the FY 1993 budget neutrality adjustment without removing the effect of the FY 1992 adjustment, the FY 1993 adjustment would be negative (.986). This is because a smaller adjustment in the standard Federal rate and the hospital-specific rate is required in FY 1993 than in FY 1992 to achieve budget neutrality. By removing the effect of the FY 1992 budget neutrality adjustment from the rates before making the calculation, the FY 1993 budget neutrality adjustment is positive (1.0933). Beginning in FY 1996, when the budget neutrality provision expires, the payment rates would be updated without regard to the budget neutrality adjustments that were applied during the first four years.

E. Payments to New Hospitals

For purposes of the capital prospective payment system, we would define a new hospital as one which is newly participating in the Medicare program (under previous and present ownership) that does not have a 12-month cost reporting period ending on or before September 30, 1990. New hospitals would be paid on a fully prospective payment basis during the transition period since by definition they have no old capital. For purposes of determining the hospital-specific rate, the hospital's base period would be its first 12-month cost reporting period (or combination of cost reporting periods covering at least 12 months). If the base period begins on or after October 1991, the hospital would be paid a blend of its Medicare inpatient capital costs and the Federal rate during its base period. The blend would be the blend applicable to the Federal fiscal year in which the base period cost reporting period begins. For example, a new hospital with a base period beginning in FY 1992 would be paid 90 percent of its capital-related costs for Medicare inpatient services and 10 percent of the Federal rate.

After the base period, a new hospital will be paid the appropriate blend of its hospital-specific rate and the Federal rate, regardless of whether its hospital-specific rate is above or below the Federal rate. During the transition period, new hospitals will have the exceptions process available to them (under § 412.322) if their capital costs exceed their payment rate.

F. Total Capital Payment

The total capital payment to a hospital for a cost reporting period would be the total of the following components by payment methodology:

Hold-Harmless Payment Methodology

Unless it qualifies for the hold-harmless payment methodology under the special rule at § 412.316(d), a hospital paid under the hold-harmless payment provision would be paid the higher of:

1. (Standard Federal Rate) × (DRG weight) × (Geographic Adjustment Factor) × (Disproportionate Share Adjustment Factor); or

2. (Standard Federal Rate) × (DRG Weight) × (Geographic Adjustment Factor) × (Disproportionate Share Adjustment Factor) × (The Lesser of—

a. The Hospital's Ratio of New Capital Medicare Inpatient Cost to Total Medicare Inpatient Capital Cost; or

b. The Applicable Federal Fiscal Year National Ratio of New Capital Medicare Inpatient Cost to Total Medicare Inpatient Capital Cost)

Plus

(Applicable Fiscal Year's Remaining Depreciation + Interest Expense for Old Capital × 90 percent) × (Budget Neutrality Adjustment Factor, if applicable).

3. In addition, the hospital would receive any outlier or exception payments applicable to the payment alternative.

If the hospital qualifies for the hold-harmless payment methodology under the special rule at § 412.316(d), the hospital would be paid the higher of:

1. (Hospital-Specific Rate × DRG weight × Hospital-Specific Blend Percentage) + (Standard Federal Rate × DRG Weight × Geographic Adjustment Factor × Disproportionate Share Adjustment Factor × Federal Transition Blend Percentage); or

2. (Standard Federal Rate) × (DRG Weight) × (Geographic Adjustment Factor) × (Disproportionate Share Adjustment Factor) × (The Lesser of—

a. The Hospital's Ratio of New Capital Medicare Inpatient Cost to Total Medicare Inpatient Capital Cost; or

b. The Applicable Federal Fiscal Year National Ratio of New Capital Medicare Inpatient Cost to Total Medicare Inpatient Capital Cost)

Plus

(Applicable Fiscal Year's Remaining Depreciation + Interest Expense for Old Capital × 90 percent) × (Budget Neutrality Adjustment Factor, if applicable).

3. In addition, the hospital would receive any outlier or exception payments applicable to the payment alternative.

Fully Prospective Payment Methodology

Under the fully prospective payment methodology, a hospital would receive:

(Hospital-Specific Rate × DRG Weight × Hospital-Specific Blend Percentage)

Plus

(Standard Federal Rate × DRG Weight × Georgraphic Adjustment Factor × Disproportionate Share Adjustment Factor × Federal Transition Blend Percentage)

Plus

Any Applicable Outlier or Exception Payments.

G. Payment Determinations During the Transition Period

We are providing examples of the payment determination for two hypothetical hospitals below using illustrative FY 1992 data (except for rates, updates and reduction factors published in this document) in order to demonstrate the payment determinations that would be required under this proposal.

The examples assume audited FY 1992 cost report data that would be used for fiscal intermediaries to make a final determination on the applicable payment methodology. However, the same process would be used to make the interim determination, using estimates of FY 1991 and FY 1992 cost report data (for example, projected new capital amounts and old capital depreciation and interest expenses) as described in B., Step 6d., above.

1. Payment Methodology Determination Examples

Example 1—Hospital A is located in Abilene, Texas. It has more than 100 beds and a disproportionate share percentage of 10 percent in FY 1992.

Cost report data:	
Base period cost report ending 10/31/89	
Medicare discharges	1,000
Medicare case mix	1.2000
Total Medicare inpatient capital costs	$800,000
FY 1992 cost reporting period ending 10/31/92	
Medicare discharges	1,000
Medicare case mix	1.2500
Total capital cost	$836,000
Old capital cost	544,000
New capital cost	292,000

Payment Adjustment data:
- Geographic adjustment factor for Abilene, Texas (Table 2a) 0.9641
- Disproportionate share (DSH) adjustment factor 1.04060

Rate adjustment factors:
- Update factor for cost reporting period ending 10/31/89 .... 1.16101
- Exception reduction factor for FY 1992 ..... 0.9308
- Budget neutrality factor for FY 1992 ..... 01.1088
- Outlier adjustment factor for FY 1992 ..... 0.949

a. Hospital-specific rate calculation:
- Allowable cost per discharge in base period ($800,00 + 1,000) $800.00
- CMI adjustment ($800 + 1.2000) 666.67
- Update to FY 1992 ($666.67 × 1.16101) 774.01
- Adjustment for exception reduction factor ($774.01 × 0.9308) 720.45
- Adjustment for FY 1992 budget neutrality factor ($720.45 × 1.1083) 798.83
- Hospital A's Hospital-specific rate 798.83

b. Adjusted federal capital rate comparison calculation:
- FY 1992 Federal capital rate (Table 1) $471.54
- Adjustment for outlier reduction factor reflected in Federal rate ($471.54 + 0.9490) ... 496.88
- Adjustment for wage index and disproportionate share adjustment ($496.88 × 0.9641 × 1.04060) 498.49
- Adjusted federal capital rate 498.49

(Note: The outlier reduction factor is implicit in the calculation of the Federal rate. Since the Federal rate already includes the same exceptions reduction factor and the budget neutrality adjustment factor, and both the Federal rate and the hospital-specific rate would be adjusted by the DRG weight, no further adjustments are needed to make the comparison.)

Since Hospital A's hospital-specific rate is above the adjusted Federal capital rate, Hospital A would be paid under the hold-harmless payment methodology throughout the transition period.

C. Comparison of Payments under Federal Rate and Hold Harmless Provision

FY 1992 adjusted Federal capital rate (from Calculation b., above) $498.49

FY 1992 payment based on 100% Federal rate Case-mix adjusted Federal capital rate ($498.49 × 1.2500 = $623.11) $623.11

C. Comparison of Payments under Federal Rate and Hold Harmless Provision—Continued

New capital payment portion of hold-harmless methodology:
- Hospital ratio of new capital costs to total capital costs in FY 1992 (292,000 ÷ 836,000) 0.3493
- Apply lower of hospital-specific ratio (0.3493) or the national ratio for FY 1992 (0.4731) to the case-mix adjusted Federal rate ($623.11 × 0.3493 = $217.65) $217.65

Old capital payment portion of hold-harmless methodology: (FY 1992 old capital amount × 0.9 × applicable budget neutrality factor [1] ÷ FY 1992 Medicare discharges) ($544,000 × 0.9 ÷ 1,000 = $489.60) 489.60

Total payment under hold-harmless payment methodology: Payment amount per discharge for new capital in FY 1992 plus payment amount per discharge for old capital ($217.65 + $489.60 = $707.25) 707.25

[1] No hold-harmless budget neutrality factor is applied for FY 1992.

Since Hospital A would receive a higher payment in FY 1992 if there were a hold-harmless payment for old capital than if payment were based on 100 percent of the Federal rate, Hospital A would be paid under the hold-harmless method in FY 1992.

Example 2—Hospital B is located in Baltimore, Maryland. It has more than 100 beds and a disproportionate share percentage of 25 percent in FY 1992.

Cost Report Data:
- Base period cost report ending 10/31/89:
  - Medicare discharges 1,000
  - Medicare case mix..... 1.1000
  - Total Medicare inpatient capital costs $338,500
- FY 1992 cost reporting period ending 10/31/92:
  - Medicare discharges 1,100
  - Total capital cost $662,000
  - Old capital cost $320,000
  - New capital cost $342,000

Payment Adjustment Data:
- Geographic adjustment factor (Table 2a) 1.0242
- Disproportionate share (DSH) adjustment factor (DSH percentage equals 25 percent) 1.0977
- FY 1992 Case Mix Index 1.2000

Rate Adjustment Factors: (Same As Hospital A's)

a. Hospital-Specific Rate Calculation:
- Allowable cost per discharge in base period ($338,500 ÷ 1,000) $338.50
- CMI adjustment ($338.50 ÷ 1.100) $307.73
- Update to FY 1992 for cost reports ending 10/31/89 ($307.73 × 1.16101) $357.28
- Adjustment for exception reduction factor ($357.28 × 0.9308) $332.56
- Adjustment for budget neutrality reduction factor ($332.56 × 1.1088) $368.74
- Hospital B's Hospital-Specific Rate $368.74

b. Adjusted Federal Capital Rate Comparison Calculation:
- FY 1992 Federal capital rate (Table 1) $471.54
- Adjustment for Outlier Reduction Factor ($471.54 ÷ 0.9490) $496.88
- Adjustment for wage index and disproportionate share adjustment ($496.88 × 1.0242 × 1.0977) $558.62
- Adjusted Federal capital rate ... $558.62

Since Hospital B's hospital-specific rate is below the adjusted Federal capital rate, Hospital B would be paid under the fully prospective payment methodology unless Hospital B's FY 1992 actual capital cost per case is above the Federal rate. In this case, either the hold-harmless methodology or the fully prospective payment methodology may be applicable under the special rule in § 412.256(d). As a result, a comparison of the FY 1992 total Medicare capital cost per case to the payments under the adjusted Federal capital rate must also be made under the following determination:

c. Determination of Eligibility and Methodology under § 412.256(d):
- FY 1992 Medicare cost per discharge = (FY 1992 total Medicare inpatient capital costs ÷ FY 1992 Medicare discharges) ($762,000 ÷ 1,100) $692.73
- FY 1992 adjusted Federal rate (From calculation b. above)... 558.62
- FY 1992 case-mix adjusted Federal rate ($558.62 × 1.20) ... 670.34

Since Hospital B has a higher FY 1992 cost per case than the adjusted FY 1992 Federal capital rate, Hospital B would receive capital prospective payments during the transition period on the basis of which payment methodology (the hold-harmless payment methodology or

the fully prospective payment methodology) would provide the higher payment as determined on a per case comparison basis prior to consideration of additional payments under the exceptions process.

d. Hold-Harmless Payment Methodology:	
Federal capital rate: (FY 1991 case-mix adjusted Federal rate) (from Calculation c., above)	$570.34
Hospital Ratio of New Capital Costs to Total Capital Costs in FY 1992:	
FY 1992 new capital costs	$342,000
FY 1992 total capital costs	$662,000
The ratio of new capital costs to old capital costs ($342,000 ÷ $662,000)	0.5166
Apply lower of hospital-specific ratio (0.5166) or national ratio for FY 1992 (0.4731)	0.4731
New Capital Payment Portion of Hold-Harmless Methodology: (Federal capital rate × ratio of new capital to total capital) ($670.34 × 0.4731)	$317.14
Old Capital Payment Portion of Hold-Harmless Methodology (FY 1992 old capital amount × 0.9 × applicable budget neutrality factor* ÷ FY 1992 discharges) ($320,000 × .9 × 1.000) ÷ 1,100)	261.82
Total Payment under Hold-Harmless Methodology Payment amount per discharge for new capital in FY 1992 plus payment amount per discharge for old capital in FY 1992 ($317.14 + $261.82)	578.96

*No hold-harmless budget neutrality factor is applied for FY 1992.

e. Fully Prospective Payment Methodology:	
Hospital-specific rate (HSR) calculation (HSR × FY 1992 CMI × HSR transition blend percentage) ($368.74 × 1.2000 × 0.9)	$368.24
Federal capital rate calculation FY 1992 case-mix adjusted Federal rate ($670.34 × 0.10)	67.03
Total fully prospective payment calculation (HSR payment per discharge plus Federal capital rate payment per discharge) ($398.24 + $67.03)	465.27

Since Hospital B would receive more under the hold-harmless payment methodology in FY 1992, payment would be made on that basis throughout the transition period.

2. Exception Payment Process

For FY 1992, we would provide that any hospital receiving capital prospective payments would be eligible for an exception payment if its total allowable Medicare inpatient capital costs exceed 150 percent of the total capital payment it receives. The additional payment would be equal to 75 percent of the cost in excess of 150 percent of the payment total. As a special payment protection, we would provide that a rural sole community hospital or an urban hospital with more than 100 beds that has a disproportionate share percentage of 30 percent or more would be eligible for a higher capital exceptions payment, as follows:

(a) If the hospital's inpatient cost per discharge is 3.0 times or more than its hospital-specific rate, the hospital is paid an additional payment equal to 75 percent of costs in excess of 100 percent of payments.

(b) If the hospital's inpatient cost per discharge is between 1.5 and 3.0 times its hospital-specific rate, the hospital is paid an amount equal to 75 percent of its Medicare inpatient capital costs in excess of the applicable threshold. The applicable threshold is determined as follows:

Step 1—Subtract the hospital's ratio of Medicare inpatient capital costs per discharge to its hospital-specific rate from 3.0.

Step 2—Multiply the result in Step 1 by 16.67.

Step 3—Add the result in Step 2 to 100 percent.

(c) If the hospital's inpatient cost per discharge is 1.5 times or less than its hospital-specific rate, the hospital is paid an additional payment equal to 75 percent of costs in excess of 125 percent of payments.

The amount of the exceptions payment under this special provision could not result in total Medicare payments for inpatient hospital services (including payments for operating, capital, and graduate medical education costs) that exceed the hospital's total Medicare inpatient costs for the cost reporting period.

The determination of whether the exception criteria are met by a hospital and the amount of the exception payment would be made by the fiscal intermediary. These additional capital payments would be determined and adjusted retroactively for each cost reporting period during the transition based on each hospital's actual allowable inpatient capital costs as determined in its Notice of Amount of Program Reimbursement under cost reimbursement principles pursuant to section 1861(v) of the Act and implementing regulations.

The following examples indicate the process that would result from application of the exception rules for FY 1992 hospital cost reporting periods.

Example 1: Hospital A is a 200-bed, urban facility paid for inpatient capital on the basis of the hold-harmless method with no DSH adjustment. Based on settlement of its FY 1992 cost report the hospital had total allowable Medicare inpatient capital costs of $1,440,000 and received capital prospective payments totalling $840,000. Since the hospital exceeded the 150 percent exception criteria ($840,000 × 1.5 = $1,260,000) by $180,000, an exception payment adjustment of $135,000 would be made by the fiscal intermediary for the cost reporting period ($180,000 × .75 = $135,000).

Example 2: Hospital B is identical to Hospital A in situation and costs except that it has a DSH percentage of 32 percent. Prior to taking the additional payments under the exceptions policy into account, the hospital's total Medicare Part A inpatient costs are $300,000 more than its Medicare payments for Part A inpatient services. The hospital's actual capital cost per discharge in the pertinent cost reporting period is less than 1.5 times its hospital-specific rate. Hospital B exceeds the applicable 125 percent exception criteria by $390,000 ($1,440,000−($840,000 × 1.25) = $390,000). Thus, the payment adjustment in this case would be $292,500 for the FY 1992 cost reporting period for Hospital B ($390,000 × .75 = $292,500). Since the exception payment would not cause the hospital to exceed the difference between its total Medicare inpatient costs and its Medicare payment total in the cost reporting period, the fiscal intermediary would make the adjustment in the Notice of Amount of Program Reimbursement process.

Example 3: Hospital C is identical to Hospital B except that its Medicare inpatient capital cost per discharge is 2.5 times its hospital-specific rate. As a result, the hospital is eligible for an exception payment for costs above 108.33 percent of its Medicare inpatient capital payments in that cost reporting period ([3.0−2.5]×16.67+100=108.33). Thus, the hospital exceeds its applicable exception criteria by $530,028 (that is, $1,440,000−[$840,000×1.0833] =$530,028). The hospital would be eligible for an additional exception

adjustment of up to $397,521 (that is, $530,028×0.75=$397,521). Since the amount of the exception is limited to the difference between total Medicare inpatient payments and total Medicare inpatient hospital costs, the Medicare fiscal intermediary would make a payment adjustment in the hospital's Notice of Amount of Program Reimbursement for $300,000. With this adjustment, the hospital would receive total Medicare inpatient hospital payments equal to its total Medicare inpatient costs.

3. Outlier Payment Process

The following is an example of how additional payment to a hosital paid under the fully prospective payment methodology would be determined for an outlier case in FY 1992. The example is for illustrative purposes, and uses the FY 1991 operating outlier thresholds and DRG weights published in the calculations in the September 4, 1990 final rule (55 FR 35990). The IME and DSH adjustments are those that will be made in FY 1992, and the standardized amounts and wage index are those that were effective for discharges occurring on or after January 1, 1991 that were published in the January 7, 1991 final rule.

Hospital A is a 150 bed hospital located in the San Francisco, California MSA, which is a large urban area. Hospital A has a ratio of interns and residents to beds of 0.1, and a disproportionate patient percentage of 30.2 percent. Mr. Jones is admitted to Hospital A on October 1, 1991 and is discharged on November 30, 1991. The billed charges for Mr. Jones' stay are $100,000. Mr. Jones is classified in DRG 286. Because Mr. Jones' 61 day stay exceeds the 39 day length of stay outlier threshold for DRG 286, Hospital A is eligible for payment for 22 outlier days in addition to the otherwise applicable prospective payment. The amount of Hospital A's outlier payment (excluding the usual Federal payments for operating and capital costs that apply for both outlier and non-outlier cases, and the hospital-specific portion of the capital payment) is calculated as follows:

Day Outlier

Step 1: Computation of the Payment Rate for Operating Costs (excludes capital, indirect medical education (IME) and disproportionate share hospital (DSH) payments)

National Large Urban Standardized Amounts:	
Labor-Related	$2,480.60
Nonlabor-Related	$1,021.98
San Francisco MSA Wage Index	1.4568
DRG 286 Relative Weight	2.4946

DRG Relative Weight × [(Labor-Related National Large Urban Standardized Amount × San Francisco MSA Wage Index) + Nonlabor-Related National Large Urban Standardized Amount] = Federal Rate for Operating Costs.

2.4946×[($2,480.60×1.4568)+ $1,021.98]=$11,564.26

Step 2: Computation of Federal Capital Payments

Federal Capital Rate	$471.54
DRG 286 Relative Weight	2.4946
Federal Portion of Capital Rate	[1] 10%
Geographic Adjustment Factor	1.2085

DRG Relative Weight × Federal Capital Rate × Federal Portion of Capital Rate × Geographic Adjustment Factor = Federal Rate for Capital Costs.

2.4946×$471.54×0.10×1.2085=$142.16

Step 3: Computation of Day Outlier Payments

Geometric Mean Length of Stay for DRG 286.	10.1 days.
Outlier Days (61−39)	22 days.
Marginal Cost Factor	60 percent.

[1] If Hospital A were paid a hold harmless payment for old capital, the Federal portion (for new capital) would be the lesser of—

- The hospital-specific ratio of new to total capital; or
- The national average ratio of new to total capital.

A. Operating Outlier Payment (excludes IME and DSH) = Number of Outlier Days × (Operating Federal Payment Geometric Mean Length of Stay for DRG 286) × Marginal Cost Factor

22 × ($11,564.26÷ 10.1) × 0.60 = $15,113.69

B. Capital Outlier Payment (excludes DSH) = Number of Outlier Days × (Capital Federal Payment Geometric Mean Length of Stay for DRG 286) × Marginal Cost Factor

22 × ($142.16 ÷ 10.1) × 0.60 = $185.79

Step 4: Computation of Operating IME and DSH Adjustment for Day Outliers:

IME Adjustment Factor	0.0744
Operating DSH Adjustment Factor.	0.1262

Operating Outlier Payment × (IME Adjustment Factor + DSH Adjustment Factor) = Operating Outlier Adjustment for IME and DSH

$15,113.69x(0.0744 + 0.1262) = $3,031.81

Step 5: Computation of Capital DSH Adjustment for Day Outliers

Capital DSH Adjustment Factor	0.1165
Capital Outlier Payment	$185.79

Capital DSH Adjustment Factor × Capital Outlier Payment = DSH Outlier Adjustment

0.1165 × $185.79 = $21.64

Step 6: Total Day Outlier Payments

Regular Operating Outlier Payment	$15,113.69
Regular Capital Outlier Payment	185.79
IME and DSH for Operating	3,031.81
DSH for Capital	21.64
Total	$18,352.93

Cost Outlier

Step 1: Computation of Hospital A's Standardized Costs

Billed Charges	$100,000
Hospital A's Operating Cost-To-Charge Ratio	[1] 0.72
Hospital A's Capital Cost-To-Charge Ratio	0.06
IME Adjustment Factor	0.0744
DSH Operating Adjustment Factor	0.1262
DSH Capital Adjustment Factor	0.1165

[1] This is the same cost-to-charge ratio currently used to determine outlier payments using operating costs only. The capital cost-to-charge ratio, when added to the operating cost-to-charge ratio, will yield a total cost-to-charge ratio. (This occurs because the denominator in both cases is total charges. The charges are not divided into operating and capital charges.)

(Billed Charges × Operating Cost-to-Charge Ratio)÷(1 + IME Adjustment Factor + Operating DSH Adjustment Factor) = Standardized Operating Costs

($100,000 × 0.72)÷(1 + 0.0744 + 0.1262) = $59,970.01

(Billed Charges × Capital Cost-to-Charge Ratio)÷(1 + Capital DSH Factor) = Standardized Capital Costs

($100,000 × 0.06)÷(1 + 0.1165) = $5,373.94

Step 2: Determination of Capital Cost Thresholds

Computation 1—Based on Federal Rate

A. Operating Federal Rate for DRG 286 = $11,564.26 2 × Federal Rate = $23,128.52

B. Capital Federal Rate for DRG 286

Federal Rate × DRG 286 Relative Weight × San Francisco MSA Geographic Adjustment Factor = Capital Federal Rate

$471.54 × 2.4946 × 1.2085 = $1,421.56 2 × Federal Rate = $2,843.12

Computation 2—Based on Adjusted Standard Cost Outlier Thresholds

Standard Cost Outlier Threshold.....$35,000
Labor-Related Share, Operating..... 0.7140
Nonlabor Share, Operating..... 0.2860

Operating Portion of Cost Threshold

Operating Cost-to-Charge Ratio ÷ (Operating Cost-to-Charge Ratio + Capital Cost-to-Charge Ratio) = Operating Cost Portion.

0.72÷(0.72+0.06)=0.9231

Capital Portion of Cost Threshold

Capital Cost-to-Charge Ratio ÷ (Operating Cost-to-Charge Ratio + Capital Cost-to-Charge Ratio) = Capital Cost Portion.

0.06÷(0.72+0.06)=0.0769

A. Wage Index Adjusted Operating Cost Outlier Threshold = Operating cost portion as a share of total costs × [(Standard Cost Outlier Threshold × Labor-Related Share × San Francisco MSA Wage Index)+(Standard Cost Outlier Threshold × Nonlabor-Related Share)].

0.9231×[$35,000×.7140×(1.4568) +($35,000×0.2860)]=$42,846.09

B. Capital Cost Outlier Threshold Adjusted by Geographic Adjustment Factor = Capital Standard Cost as a Share of Total Costs × Standard Cost Outlier Thresholda × San Francisco MSA Geographic Adjustment Factor.

0.0769×35,000×1.2085=$3,252.68

Computation 1 Result, Operating—$23,128.52.

Computation 1 Result, Captial—$2,843.12.

Threshold Using Computation 1=$23,128.52+$2,843.12=$25,971.64.

Computation 2 Result, Operating—$42,846.09.

Computation 2 Result, Capital—$3,252.68.

Threshold Using Computation 2=$42,846.09+$3,252.68=$46,098.77.

The applicable cost outlier threshold equals the results of Computation 2.

Step 3: Determination of Cost Outlier Payment

Marginal Cost Factor—0.75.

A. Operating Outlier Payment

Operating Outlier Cost = Standard Operating Costs − Operating Threshold.

$59,970.01−$42,846.09=$17,123.92

Operating Outlier Payment = Operating Outlier Cost × Marginal Cost Factor.

$17,123.92×0.75=$12,842.94

B. Federal Portion of Capital Outlier Payment

Capital Outlier Cost = Standard Capital Costs − Capital Threshold.

$5,373.94−$3,252.68=$2,121.26

Capital Outlier Payment = Capital Outlier Cost × Marginal Cost Factor.

2,121.26×0.75=$1.590.95

Federal Portion of Capital Outlier Payment = Federal Portion of Capital Rate × Capital Outlier Payment.

$1,590.95×0.10=$159.10

Step 4: Computation of Operating IME and DHS Adjustment for Cost Outliers

Operating Outlier Payment × (IME Adjustment Factor + Operating DSH Adjustment Factor) = Operating Cost Outlier Payment for IME and DSH.

$12,842.94×(0.0744+0.1262)=$2.576.29

Step 5: Computation of Capital DSH Adjustment for Cost Outliers

Capital Outlier Payment × Capital DSH Adjustment Factor = Cost Outlier Payment for DSH.

$159.10×0.1165=$18.35

Step 6: Total Cost Outlier Payments

Operating	$12,842.94
Federal Portion of Capital	159.10
IME and DSH for Operating	2,576.29
DSH for Capital	18.35
Total	15,596.68
Determination of Outlier Payment:	
Total Day Outlier Payment	18.352.93
Total Cost Outlier Payment	15,596.68

Hospital A receives the greater of the two payments, which is $18,352.93, the day outlier payment.

V. Other Required Information

A. Paperwork Reduction Act

Sections 412.300ff of this proposed rule contain information collection requirements subject to review by the Office of Management and Budget under section 3507 of the Paperwork Reduction Act (44 U.S.C. 3501 through 3511). This section requires hospitals that are paid under the "hold harmless" provision to segregate capital costs between old capital and new capital as defined in § 412.300(b) throughout the payment transition. We estimate that approximately 1,750 hospitals would receive a hold harmless payment for old capital. Because we are uncertain about the burden required to maintain separate records for old and new capital, we invite public comment on the amount of burden this may impose on hospitals. Organizations and individuals desiring to submit comments on the information collection requirements and respondent and burden estimates should direct them to HCFA and the OMB official whose name appears in the Addresses section of this preamble. A notice will be published in the **Federal Register** after approval is obtained for the additional recordkeeping requirements.

B. Public Comment Period

Because of the large number of comments that we normally receive during a comment period, we are unable to acknowledge or respond to each comment individually. However, in preparing the final rule, we will consider all comments that we receive by the date and time specified in the "Date" section of this preamble and respond to those comments in the preamble to that final rule.

C. Regulatory Impact Analysis

1. Introduction

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

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- A significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed rule would not have a significant economic impact on a

substantial number of small entities. For purposes of the RFA, we consider all hospitals to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. With the exception of hospitals located in certain rural counties adjacent to urban areas and hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds located outside of a Metropolitan Statistical Area or New England County Metropolitan Area. Section 1886(d)(8)(B) of the Act specifies that hospitals located in certain rural counties adjacent to one or more urban areas are deemed to be located in the adjacent urban area. We have identified 52 rural hospitals, some of which may be considered small, that we have reclassified as urban hospitals. Also, section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21) designated hospitals in certain New England counties as belonging to the adjacent New England Metropolitan County. Thus, for purposes of incorporating capital-related costs into the prospective payment system, we classified these hospitals as urban hospitals.

It is clear that the changes being implemented in this document would affect both a substantial number of small rural hospitals as well as other classes of hospitals, and the effects on some may be significant. Therefore, the discussion below, in combination with the rest of this proposed rule, constitutes a combined regulatory impact analysis and regulatory flexibility analysis in accordance with E.O. 12291 and the RFA.

2. Objectives

By incorporating capital-related costs into the prospective payment system, we are extending the objectives underlying the current payment system for operating costs to this area of hospital inpatient costs consistent with the Medicare law. Because we have continued to pay hospital capital-related costs on a pass-through basis, hospital administrators have had less incentive to bring their capital-related spending in line compared to inpatient hospital operations under the prospective payment system.

Under reasonable cost payment, a hospital has very little financial incentive to invest prudently in capital assets because the pass-through method of paying for capital-related costs partially shields the hospital from the full economic consequences of its decisions. Thus, access to financial markets and competitive pressures may be more important factors in determining a hospital's capital investments than the overall contribution of such assets to the effective or efficient operation of the facility. For example, under cost-based reimbursement, a hospital could borrow funds for expansion of its plant that would result in surplus capacity, and Medicare would still pay its share of those capital costs. In this manner, the Medicare program may absorb some of the risk for an unsound investment by partially underwriting that investment regardless of its cost or its contribution to patient care services.

Although the congressionally mandated reduction in Medicare payments for capital-related costs may have achieved some savings, the reasonable cost system still remains largely unchecked by competitive market forces. The retrospective payment system now in effect does not constrain hospital capital-related spending sufficiently to bring these costs under control.

As the following table illustrates, in spite of the congressionally mandated reductions in capital payments, Medicare inpatient capital costs per case have increased as a percent of total Medicare inpatient costs per case.

	PPS–I	PPS–II	PPS–III	PPS–IV	PPS–V
Total Medicare inpatient costs per case	3413.37	3815.73	4237.33	4674.57	5081.27
Medicare inpatient capital cost per case	311.08	381.10	431.10	486.23	528.91
Capital costs as a percent of inpatient costs	9.1	10.0	10.2	10.4	10.4

The chief objective we hope to achieve through paying for inpatient capital-related costs on a prospective payment basis is to establish the same kind of economic relationship between hospital operational characteristics and market conditions on the one hand, and capital investment decisions, on the other hand, as exists in a price-competitive market. This proposal to establish prospective payment rates for inpatient hospital capital-related casts, therefore, would establish a payment system that would result in hospitals accepting a greater degree of risk for their investment decisions. Extending the prospective payment system principles to payments for capital-related costs would subject these costs to the same financial and economic incentives to which operating costs are now subject.

Our other objectives include:

- Assuring adequate payments for the cost of assets acquired and expensed prior to program implementation;
- Adhering to the specific payment reductions set forth in section 4001 of Public Law 101–508 enacted on November 5, 1990; and
- Implementing a fair and equitable transition from reasonable cost payments to a perspective rate based on industry-wide average capital costs.

We believe these proposals would further all of our goals while maintaining the financial viability of the hospital industry and ensuring access to high quality care for beneficiaries.

We also expect these proposed changes to further these objectives while avoiding or minimizing unintended adverse consequences and ensuring that the outcomes of this payment system are, in general, reasonable and equitable.

In the analysis that follows we confine our discussion to the effects of our proposed policy on hospitals. Nevertheless, we are aware that other sectors of the economy and individuals may be affected by these proposals. For example, the proposal should have a beneficial impact on beneficiary and private patients. Reduced capital spending would benefit Medicare and private patients and other third party payers through lowering direct payments of deductibles and coinsurance amounts, and slowing the growth of FICA taxes and health insurance premiums. Yet reduced spending for capital projects and equipment may result in slowing the growth in the access needed medical

services. However, we also believe that our proposals would not adversely affect the quality of care and access to needed health services.

The effects of our proposal on the construction industry is uncertain. In the short run, as hospitals reduce their capital programs to bring spending in line with payments, there may be a slowdown in hospital construction activity. However, as funds that would have gone into hospital capital spending through third party contributions are shifted into other sectors of the economy, construction in these other areas may increase, thus, offsetting or reducing the losses in hospital construction. Furthermore, since we believe that the hospital sector of the economy is over-capitalized relative to demand, freeing up funds for spending in other sectors may also result in greater overall economic productivity.

Nevertheless, because we lack the data and resources to evaluate the costs and benefits of our proposals to these other sectors of the economy and to private patients and other third party payers, we specifically ask for comments on these issues.

3. Hospitals Included In and Excluded From the Capital Prospective Payment System

In general, hospitals began operating under the prospective payment system with the start of their cost reporting period beginning on or after October 1, 1983. Section 1886(g)(1)(A) of the Act requires that all hospitals subject to section 1886(d) of the Act be paid for the capital-related costs of their inpatient services on a prospective payment basis effective with the hospitals' first cost reporting period after September 30, 1991. Since September 1985, both Massachusetts and New York have terminated the waivers under which they were excluded from the Medicare prospective payment system, and hospitals in those States have entered the prospective payment system. (Massachusetts hospitals came under the Medicare prospective payment system in October 1985, while New York hospitals began receiving Medicare prospective payments in January 1986). Effective January 1, 1989, the 94 short-term, acute care hospitals located in New Jersey came under the prospective payment system. The demonstration project being conducted in the Rochester region of New York State has ended and the 10 hospitals in that region are now under the prospective payment system.

With the enactment of section 9304 of Public Law 99–509, which added section 1886(d)(9) to the Act, the 58 acute care hospitals located in Puerto Rico began receiving payments under the prospective payment system effective with discharges occurring on or after October 1, 1987. Also, effective with cost reporting periods that began on or after October 1, 1987, alcohol/drug hospitals and units that had been excluded from the prospective payment system under § 412.22(c) of the regulations began receiving Medicare prospective payments. Thus, only 59 short-term, acute care hospitals remain excluded from the prospective payment system under section 1814(b)(3) of the Act (in Maryland) or demonstration projects (in the Finger Lakes regions of New York State). As of December 31, 1990, about 5,530 hospitals (85 percent of all Medicare-participating hospitals) were operating under the prospective payment system.

As of December 31, 1990, almost 690 Medicare hospitals were excluded from the prospective payment system and continue to be paid on the basis of their reasonable cost, subject to limits on the rate of their cost increases. These hospitals include psychiatric, rehabilitation, long-term care, and children's hospitals. Another 1,810 psychiatric and rehabilitation units in hospitals subject to the prospective payment system are excluded from the prospective payment system as of the same date. These units, too, are paid on the basis of reasonable cost subject to limits on the rate of their cost increases. Although hospitals extensively involved either in the treatment of cancer or cancer research have been paid on a reasonable cost basis, section 6004(a) of Public Law 101–239 specifically excluded these hospitals from the prospective payment system effective with cost reporting periods beginning on or after October 1, 1989. There are currently eight hospitals that HCFA has designated as cancer research or treatment hospitals.

Since hospitals excluded from the prospective payment system would also be excluded from the capital-related prospective payments, we anticipate no effect on payments for capital-related costs to these hospitals and do not consider them further in this impact analysis.

4. Impact of Capital Payments on Hospitals

a. *General Considerations.* Any impact analysis of payment changes for capital-related costs is limited by our ability to develop meaningful projections of new capital investment.

Because investment in capital assets do not occur evenly over time, there can be significant differences in individual hospital rates of growth in Medicare capital costs per case. We do not have the hospital-specific data on capital investment to incorporate these different growth rates into projections of FY 1992 capital costs per case for individual hospitals from PPS–5 data, the latest actual data available. Since our FY 1992 projection of capital-related costs could be inaccurate for individual hospitals, a cross-sectional impact analysis using the usual prospective payment system hospital groupings (for example, urban/rural, teaching/nonteaching, etc.) that relied on individual hospital projections from PPS–5 data may not be representative of the impact of the capital prospective payment system.

Further, our analysis of the variation in capital costs per case indicates that the groupings of hospitals used in impact analyses of the prospective payment system for operating costs are not very useful in identifying hospitals that would be affected by the proposed change in capital payment policy. The most important factors that would determine the impact of the proposed capital prospective payment system on an individual hospital are the timing and amount of its capital expenditures. Our analysis reveals that the timing and amount of spending for capital are not highly correlated with the characteristics used for grouping hospitals in impact analyses of the prospective payment system for operating costs. This is because the hospital characteristics used to establish these groupings are not highly correlated with other variables, such as the age of the capital assets and financing variables, that are important factors in explaining the variation in capital costs per case among hospitals.

b. *Projected Impact Based on the Capital Acquisition Model.* Based on these considerations, our approach to the impact analysis in this proposed rule is different from the approach we have taken in earlier proposals to pay for capital on a prospective basis. In those proposed rules, we presented static impact analyses that assumed all hospitals experienced the same rate of growth in capital costs per case. However, in developing this proposed rule, we need to model individual hospital capital growth rates for budget neutrality purposes. Consequently, we believe our impact analysis should rest on the same assumptions underlying the proposed payment methodology. In this impact analysis, therefore, we have attempted to model dynamically the impact of the capital prospective payment system from FY 1992 through FY 1995 using a capital acquisition model. This model, which is described in

Appendix A, contains 6000 hypothetical hospitals and includes the payment variables needed to estimate aggregate payments under the capital prospective system; however, it does not include the detailed hospital characteristics needed to produce the cross-sectional impact analysis we have presented in the previous capital prospective payment proposals. For purposes of the impact analysis, the model includes the following assumptions:

- Medicare inpatient capital costs per discharge would increase at the following rates during these periods:

Fiscal year	Average rate of increase (percent)
1991	6.04
1992	6.80
1993	7.76
1994	7.73
1995	7.76

- The Medicare case mix index would increase by 2 percent annually.
- The Federal capital rate as well as the hospital-specific rate would be updated by the average increase in Medicare capital costs per case, adjusted for case mix change, that occurred two years previous to the fiscal year in question. For example, the FY 1995 update would be 5.65 percent (the FY 1993 increase adjusted for a 2 percent increase in case mix, or 1.0776/1.02).
- Payments under the exceptions process would be limited to 10 percent of aggregate payments made under the Federal and hospital-specific rates. The percentage of payment in excess of the qualifying threshold for an exception would be reduced as necessary to maintain the 10 percent limitation.
- Consistent with the budget neutrality constraints provided by section 4001(b) of Public Law 101–508, aggregate Medicare payments for capital costs in each year would equal 90 percent of total Medicare inpatient capital costs. Since the model projects a positive adjustment would be required each year, the budget neutrality adjustment factor would be applied to the Federal and hospital-specific rates only (and not to the hold-harmless payment for old capital).

We have used the model to estimate the change in payment for capital-related costs relative to payments based on 85 percent of reasonable costs from FY 1992 through FY 1995. The results are presented separately for hospitals that would be paid under the fully prospective rate and for hospitals that would be paid under the hold-harmless methodology. The breakdown of hospitals by transition payment methodology is as follows:

CAPITAL TRANSITION PAYMENT METHODOLOGY

Payment methodology	Percent of hospitals	FY 1992 percent of discharges	FY 1992 percent of capital costs	FY 1992 average cost per discharge
Fully Prospective	54	54	25	$316.29
Hold-Harmless	46	46	75	1124.98

Assuming no behavioral changes in capital expenditures, Table 1 displays the percentage change in payments from FY 1992 through FY 1995 relative to payment based on 85 percent of reasonable costs. We have used 85 percent of reasonable costs as the baseline because it is the FY 1991 payment level. The percentage of hospitals were calculated for each cell in Table 1 compared to the total universe of hospitals used in our impact model. Since aggregate payments under the capital prospective payment system for FY 1992 through FY 1995 will equal 90 percent of what would have been payable on a reasonable cost basis there will be an aggregate 5.9 percent increase in Medicare capital payments during this period compared to 85 percent of reasonable cost. We project that hospitals paid under the fully prospective payment methodology would experience an average case-weighted increase in payments of 42.8 percent; hospitals paid under the hold-harmless methodology would experience an average decrease of 6.5 percent. A 20 percent change in capital payments represents about a 2 percent change in total Medicare inpatient payments.

In the short run, we would not expect there to be a significant change in the rate of new capital investments. Immediate behavorial changes in captial expenditures are unlikely because of the time required for the planning and completion of capital projects and for modifying financing arrangements. We would expect, however, that hospitals would respond to the incentives of the capital prospective payment system within a few years and modify their behavior accordingly.

Under the hold-harmless provision, hospitals would be paid 90 percent of their reasonable costs for old capital. New capital costs, over which they have more discretion, would be paid on a prospective basis based on a portion of the Federal rate. The reductions in payments compared to 85 percent reasonable cost reimbursement that are reflected in our projections are attributable solely to payments for new capital investment. The analysis of changes in rates of new investment indicate that hospitals with relatively high capital costs would be able to significantly lessen the impact of the capital prospective payment system by reducing their new capital investment by, for example, choosing to postpone the acquisition of noncritical assets or purchasing less costly assets. In addition, hospitals have the ability to undertake various term financing arrangements that could bring their stream of debt payments over time into line with the expected Medicare capital payments. Further, we note that the projected reductions in FY 1992 payments do not necessarily imply losses for hospitals. A noncash expense, such as depreciation, may cause a hospital to show an accounting loss, but does not affect cash flow.

In Tables 2 and 3, we present the average dollar change in capital payments per case compared to payments based on 85 percent of reasonable costs using different assumptions regarding the rate of new capital investment. A $200 increase or decrease in capital payments represents about a 3 percent change in total Medicare inpatient payments. The percentage of hospitals in these tables were calculated using the number of hospitals in each payment category (that is, hold harmless or fully prospective) rather than the total universe as in Table 1. Table 2 displays the impact for hospitals paid under the fully prospective payment methodology. Scenario 1 assumes no behavioral change; that is, the rate of growth is the same as under the reasonable cost payment system. Scenario 2 assumes that there would be a 10 percent aggregate reduction in new capital investment beginning in FY 1994 compared to the currently projected increase in new capital investments under the reasonable cost payment system. Since most hospitals paid under the fully prospective payment methodology would accumulate surpluses during the transition, Scenario 3 assumes a 10 percent aggregate increase in new capital investment beginning in FY 1994. Assuming no behavioral change, the average payment per case would increase $115.08 in FY 1992 (under any of the scenarios) and $164.82 in FY 1994 (Scenario 1). In FY 1994, the average payment per case would increase $169.80 relative to

payment based on 85 percent of reasonable costs if new capital investment declined by 10 percent and would increase $160.38 if new capital investment increased by 10 percent.

The relationship between changes in the rate of new capital investment and the impact of capital prospective payments on hospitals paid under the hold-harmless methodology is illustrated in Table 3. Scenario 1 assumes no change in capital investment patterns. Scenario 2 assumes a 10 percent aggregate reduction in capital spending compared to spending under cost reimbursement beginning in FY 1994, and Scenario 3 assumes a 20 percent aggregate reduction beginning in FY 1994. Assuming no behavioral changes, the average payment per case would decrease $62.27 in FY 1992 and $109.85 in FY 1994 relative to payment based on 85 percent of reasonable cost. In FY 1994, the average payment per case would decrease $95.86 and $83.46 if hospitals reduced new capital investment by 10 and 20 percent, respectively. In FY 1995, the average payment per case would decrease $146.47 if there were no change in the rate of new capital investment. The average payment per case would decrease $117.16 if hospitals paid under the hold-harmless methodology reduced new capital investments by 10 percent and $91.23 if new capital investment were reduced by 20 percent.

c. *Cross-sectional Comparison of Average Capital Costs Per Case.* Using PPS–5 cost report data (cost reporting periods beginning in FY 1988), we compared the case-weighted average capital cost per case for major hospital groupings to the national average cost per case. The purpose of this analysis is to provide the public with the most recent data available regarding the magnitude and direction of cost differences across hospitals. It is important to recognize, however, that changes that have occurred since the PPS–5 cost reports may well result in different relative relationships in FY 1992.

In order to provide an indication of which hospitals would be likely to be paid under the fully prospective payment methodology and which hospitals would be paid under the hold-harmless methodology, Table 4 displays within each hospital grouping the case weighted cost per case adjusted for the payment variables that would be used in the capital prospective payment system (other than outliers). That is, we adjusted each hospital's average cost per case for its FY 1988 case mix, the disproportionate share adjustment factor, and geographic adjustment factor. We did not adjust for outliers because the comparison between the Federal rate and the hospital-specific rate for purposes of determining which payment methodology would be applicable throughout the transition is made exclusive of the outlier payments to an individual hospital. Table 4 shows the average case-weighted adjusted cost for all hospitals and separately for hospitals above and below the national average adjusted cost per case.

The relationship between the case-weighted adjusted cost per case for the hospital grouping and the national average adjusted cost per case is comparable to what the relationship between the hospital-specific rate and the Federal rate would be if the hospital-specific rate were based on PPS–5 data. This provides an indication of which hospital groupings tend to have relatively high costs after the payment variables are taken into account. These groupings are likely to have a higher proportion of hospitals paid under the hold-harmless methodology. Conversely, those hospital groupings that end to be low cost are likely to have a higher proportion of hospitals paid under the fully prospective methodology. We note that hospital investments in new capital between PPS–5 and the actual base year used to establish the hospital-specific rate (the latest cost reporting period period ending on or before September 30, 1990) may result in a somewhat different distribution of hospitals than the one shown in Table 5.

Within most hospital groupings, there is a roughly equal division of hospitals above and below the national average. The difference between the cost per case for large urban hospitals and the national average is 6.1 percent and the hospitals are evenly divided between those with an average adjusted cost per case above the national average and those with an average adjusted cost per case below the national average. The difference between the average cost per case for rural hospitals and the national average is −9.8 percent; however, 75 percent of rural hospitals have a adjusted cost per case below the national average. In particular, 83 percent of rural hospitals with fewer than 50 beds have adjusted cost below the national average, and 76 percent of rural hospitals with 50 to 99 beds have an average adjusted cost below the national average. The average difference between the national average cost per case for hospitals with fewer than 50 beds and for hospitals with 50 to 99 beds is −45.7 percent and −38.9 percent, respectively.

For major teaching hospitals, the average adjusted cost per case is 0.9 percent higher than the national average; 57 percent of major teaching hospitals have an average cost per case that is below the national average after adjustment for the payment variables.

The percentage difference between the average adjusted cost per case and the national average for proprietary hospitals is to 29.6 percent. The proprietary hospitals are the only group of hospitals that is likely to have a majority of hospitals paid under the hold-harmless methodology. About 64 percent of proprietary hospitals have a capital cost per case on average above the national average cost per case. The case weighted average cost for these hospitals is 61.2 percent above the national average. As a group, proprietary hospitals have significantly newer fixed assets and somewhat newer moveable equipment than other hospitals. Our measure of average asset age is the ratio of accumulated depreciation to current depreciation. Using PPS–5 cost report balance sheet information on 1906 hospitals, the average age of fixed assets is 5.66 years for the proprietary hospitals, compared to the national ratio of 9.83 years. For moveable equipment, the ratio for proprietary hospitals was 4.77 years compared to the national ratio of 5.84 years. The proprietary hospitals also have a higher ratio of total liabilities to total assests (.65) than any other hospital grouping and the lowest ratio of non-capital investments to total assets (.28). Table 5 displays comparative information on capital age and financing variables as well as case mix for the 1906 hospitals. Other than the proprietary hospitals, the case-weighted means of the capital age and financing variables for each hospital grouping are similar to the national averages.

The preceding analysis gives an indication of those hospitals that have below average capital costs per case and those with above average costs. Keeping in mind that more current cost report data could alter our analysis. Table 4 indicates which groups of hospitals would most likely qualify for fully prospective payments and those that would most likely qualify under the proposed hold-harmless provisions. In Table 5 we present data developed from our regression analysis that helps explain why proprietary hospitals, in particular, are likely to qualify under the hold-harmless provisions.

d. *Federal Rate Payment Simulations.* To estimate the potential impact of payment based solely on the Federal rate, we simulated what payments

would have been if PPS–5 capital payments had been based solely on the Federal rate and the proposed payment adjustments instead of reasonable cost payments. We constrained the total capital payments in the simulation to the PPS–5 cost levels; thus, the case-weighted average payment per case equals the case-weighted PPS–5 average cost per case. Table 6 displays the percentage difference between the average cost per case and the average payment per case and the percentage difference between the average cost per case after standardizing for the capital age and financing variables and the average payment per case. These data are for the 1906 hospitals for which sufficient balance sheet information was available to develop the capital age and financing variables. We standardized for these variables to illustrate the effect they have on capital costs per case and on the impact of prospective payments and because we expect hospitals to adapt their capital timing and financing decisions to the incentives of the prospective payment system. The comparison between payments and actual costs illustrates the impact of a Federal rate assuming no changes in behavior. The comparison between payments and standardized costs provides an indication of what the impact would be in the long run, assuming no changes in new capital acquisitions. We would expect the differences in capital financing and age attributes to even out over time. To provide an indication of the effect of the payment adjustments, the comparisons are made to both payments based on the Federal rate without further adjustment and payment based on the Federal rate adjusted for case mix, outliers, disproportionate share, and the geographic adjustment factor; that is, the payment rules applicable to 100 percent of payment after the transition expires.

The simulation results are consistent with the other analyses of PPS–5 costs per case. As expected, both the payment adjustments and standardization for the capital age and financing variables serve to reduce the percentage difference between costs and payments. For most hospital groupings, there would have been less than a 5 percent difference between their actual costs per case or their standardized cost per case and the adjusted Federal rate. Hospitals in five groupings, in this simulation, would have received adjusted Federal payments that are more than 5 percent below their standardized cost per case. These are: rural hospitals with between 150 and 200 beds, rural hospitals with more than 200 beds, sole community hospitals, rural referral centers and hospitals with between 0 and 25 percent Medicare utilization. Of these groups, only rural referral centers would have also received payments that are more than 5 percent below their actual costs per case. In this simulation, rural hospitals with fewer than 50 beds and 50–99 beds would have received payments that were about 25 percent and 9 percent, respectively, higher than their actual costs per case and about 1 percent above their standardized costs per case.

For proprietary hospitals, the difference between the impact based on actual costs and on standardized costs is marked. The adjusted Federal rate payments would have been 21.5 percent lower than actual average costs per case compared to .3 percent higher than standardized average costs per case.

e. *Impact of the Proposed Exceptions Policy.* In accordance with the authority given to the Secretary under section 1886(g)(1)(B) of the Act to grant exceptions to the capital prospective payment system, we are proposing to pay hospitals in financial difficulties additional amounts for their capital related costs. These exceptions are intended to help hospitals that have committed themselves to major capital projects that would be brought into service sometime during the transition period. We recognize that major capital projects are often planned for in advance of their completion date and the plans for these projects assume specific cash flow levels. Thus, our proposed prospective payment system for capital could disrupt a hospital's financial plans and may cause some hospitals financial distress. We are therefore proposing the exceptions policy described in section IV. C of the preamble to this proposed rule. These exceptions would be available only during the transition period in keeping with the principle that the price paid for hospital services should be independent of a hospital's investment decisions.

Under the proposed exceptions policy, beginning in fiscal year 1992, any hospital would be eligible for an exception if its capital costs exceed 150 percent of the capital payments without consideration of any payments under this exceptions process. A hospital that meets this requirement would receive an additional payment equalling 75 percent of those capital-related costs in excess of the 150 threshold.

Rural sole community hospitals and urban hospitals with 100 or more beds that have a disproportionate patient share of 30 percent or more would be eligible for a special exception. As explained in the preamble to this proposed rule, the amount of this special exception would be based on the relationship of current capital costs to the hospital-specific rate. If the hospital's capital costs per case are 3.0 times or more the hospital-specific rate, the hospital would be eligible for an additional payment equal to 75 percent of its Medicare inpatient capital costs in excess of 100 percent of payments. If the resulting capital costs per case are 1.5 times the hospital-specific rate or less, the hospital would be eligible for an additional payment equal to 75 percent of costs above 125 percent of payments. We would use a sliding scale for hospitals with cost-to-hospital-specific rate ratios between 1.5 and 3.0. The applicable percentage would be determined by applying a formula. It would be calculated by subtracting the hospital's ratio of Medicare inpatient capital costs per discharge to its hospital-specific rate from 3.0, multiplying the difference by 16.67, and adding the result to 100 percent.

The amount of the exceptions payment under this special provision could not result in total Medicare payments that exceed the hospital's total Medicare inpatient costs for part A inpatient hospital services for the cost reporting period. A rural sole community hospital or urban hospital with more than 100 beds and a disproportionate share percentage of at least 30 percent would be paid under the general exceptions policy applicable to other hospitals if the hospital would receive a higher payment under the general exceptions policy.

We examined the PPS–5 cost report data to determine the number of hospitals that are potentially eligible for the special exceptions provision. We estimate that there are 400 urban hospitals with more than 100 beds and a disproportionate share percentage of 30 percent or more. Approximately 36 percent of these hospitals had Medicare payments that were less than their total Medicare inpatient costs in their PPS–5 cost reporting period and would benefit from the special exceptions provisions if they incurred significant increases in capital costs. Of the 391 sole community hospitals in our data base, 60 percent had Medicare payments that were less than their total Medicare inpatient costs. We note that an estimate based on the PPS–5 data may not reflect the number of potentially eligible hospitals. This is because changes since PPS–5 in tr.e payment formula for both disproportionate share hospitals and sole community hospitals have increased Medicare payments so these

two classes of hospitals and should result in fewer hospitals having a negative Medicare operating margin. In addition, the extent to which their total Medicare inpatient costs exceed their Medicare payments would be affected by the relationship between the capital prospective payments and a hospital's capital costs. We are, therefore, unable, to estimate how many hospitals may qualify for the special exception.

The simulation results indicate that most of the additional payments under the exceptions process would be paid to hospitals paid under the hold-harmless methodology. In fiscal year 1992, 12 percent of hospitals would qualify for an exceptions payments. However, 26 percent of the hold-harmless hospitals would receive 99 percent of the additional payments; less than 2 percent of hospitals paid under the fully prospective payment rate would qualify for an additional payment under the exceptions process.

5. Alternatives Considered

In addition to the alternative of determining hospital specific payments on a "rolling average" basis, we could have also calculated separate hospital specific and Federal payments for fixed and movable equipment as we proposed in our May 19, 1987 notice of proposed rulemaking. We decided not to develop separate payment schedules for fixed and movable capital because—

- This is a highly regulatory approach that requires classifying each asset as to whether it is fixed or movable;
- The distinction between fixed and movable equipment is often artificial and could lead to inappropriate incentives to favor one type of capital expenditures over the other;
- We thought it fairer to establish one payment schedule that would allow hospital staff the greater flexibility to decide how their capital funds should be spent rather than determine, in advance, the proportion of funds allocated for fixed and movable capital based on historical data.

Thus we are proposing one basic rate for all capital (but two payment methods in recognition of those hospitals with higher than average capital costs and those with below average costs.)

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TABLE 1 - IMPACT OF CAPITAL PROSPECTIVE PAYMENT SYSTEM ON ALL HOSPITALS

CHANGE IN PAYMENT COMPARED TO 85 PERCENT OF REASONABLE COST REIMBURSEMENT

Percent of Total Hospitals

	Hospitals Paid Under Fully Prospective Methodology (54 Percent of Hospitals)				Hospitals Paid Under Hold-Harmless Methodology (46 Percent of Hospitals)			
	FY 1992	FY 1993	FY 1994	FY 1995	FY 1992	FY 1993	FY 1994	FY 1995
LOSS								
20 percent or more	0.3	0.5	0.9	1.3	5.8	7.2	15.2	17.5
10-20 percent	0.7	1.1	0.9	1.0	11.2	12.3	7.8	7.6
0-10 percent	1.5	1.8	2.1	1.7	12.2	11.9	8.7	6.4
GAIN								
0-10 percent	2.6	2.7	2.6	2.5	6.3	4.9	4.2	3.7
10-20 percent	3.0	3.0	2.7	2.4	3.1	2.8	2.6	2.7
20 percent or more	45.8	44.8	44.5	44.9	7.6	7.2	7.8	8.3
Average percentage change	42.8	45.5	50.8	57.0	(6.5)	(8.8)	(10.0)	(12.5)

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TABLE 2.—IMPACT OF CAPITAL PROSPECTIVE PAYMENT SYSTEM ON HOSPITALS PAID UNDER FULLY PROSPECTIVE METHODOLOGY

[Payment Change per (Dollars) Case Compared to 85 Percent of Reasonable Cost Reimbursement]

	Percent of hospitals			
	FY 1992	FY 1993	FY 1994	FY 1995
Scenario 1: No Change in New Capital Costs				
LOSS:				
$200+	0.1	0.2	0.4	1.2
$100–200	0.5	1.1	1.8	2.3
$0–100	4.0	4.9	5.0	4.1
GAIN:				
$0–100	43.3	25.2	15.2	11.3
$100–200	45.4	56.2	47.8	28.2
$200+	6.7	12.4	29.6	53.1
Average dollar change per case	115.08	134.59	164.82	201.27
Average Percentage Change	42.8	45.5	50.8	57.0
Scenario 2: 10 Percent Reduction in New Capital Costs Beginning in FY 1994				
LOSS:				
$200+	0.1	0.2	0.4	0.9
$100–200	0.5	1.1	1.5	1.7
$0–100	4.0	4.9	4.6	3.6
GAIN:				
$0–100	43.3	25.2	14.5	10.1
$100–200	45.4	56.2	48.0	27.6
$200+	6.7	12.4	31.0	56.2
Average dollar change per case	115.08	134.67	169.80	211.30
Average Percentage Change	42.8	45.5	53.2	61.6
Scenario 3: 10 Percent Increase in New Capital Costs Beginning in FY 1994				
LOSS:				
$200+	0.1	0.2	0.3	1.3
$100–200	0.5	1.1	2.3	2.5
$0–100	4.0	4.9	5.7	5.2
GAIN:				
$0–100	43.3	25.2	15.6	12.3
$100–200	45.4	56.5	47.8	28.2
$200+	6.7	12.4	28.3	50.4
Average dollar change per case	115.08	134.59	160.38	192.46
Average Percentage Change	42.8	45.5	48.7	52.9

TABLE 3.—IMPACT OF CAPITAL PROSPECTIVE PAYMENT SYSTEM ON HOSPITALS PAID UNDER HOLD-HARMLESS METHODOLOGY

[Payment Change per Case (Dollars) Compared to 85 Percent of Reasonable Cost Reimbursement]

	Percent of hospitals			
	FY 1992	FY 1993	FY 1994	FY 1995
Scenario 1: No Change in New Capital Costs				
LOSS:				
$200+	20.7	25.9	33.6	39.9
$100–200	15.7	16.8	15.0	12.3
$0–100	26.7	25.2	20.0	15.8
GAIN:				
$0–100	20.9	16.7	14.1	12.4
$100–200	13.0	11.0	10.8	11.0
$200+	3.0	4.4	6.6	8.5
Average dollar change per case	62.27	79.80	109.85	146.47
Average Percentage Change	6.5	7.8	10.0	12.5
Scenario 2: 10 Percent Reduction in New Capital Costs Beginning in FY 1994				
LOSS:				
$200+	20.7	25.9	31.5	37.0
$100–200	15.7	16.8	15.3	12.7
$0–100	26.7	25.2	20.4	16.8
GAIN:				
$0–100	20.9	16.7	14.7	12.6

TABLE 3.—IMPACT OF CAPITAL PROSPECTIVE PAYMENT SYSTEM ON HOSPITALS PAID UNDER HOLD-HARMLESS METHODOLOGY—Continued

[Payment Change per Case (Dollars) Compared to 85 Percent of Reasonable Cost Reimbursement]

	Percent of hospitals			
	FY 1992	FY 1993	FY 1994	FY 1995
$100–200	13.0	11.0	11.1	11.4
$200+	3.0	4.4	7.0	9.5
Average dollar change per case	62.27	79.80	95.86	117.16
Average Percentage Change	6.5	7.8	8.9	10.2
Scenario 3: 20 Percent Reduction in New Capital Costs Beginning in FY 1994				
LOSS:				
$200+	20.7	25.9	29.8	34.1
$100–200	15.7	16.8	15.4	12.9
$0–100	26.7	25.2	20.9	17.1
GAIN:				
$0–100	20.9	16.7	15.1	13.5
$100–200	13.0	11.0	11.4	11.7
$200+	3.0	4.4	7.3	10.8
Average dollar change per case	62.27	79.80	83.46	91.23
Average Percentage Change	6.5	7.8	7.8	8.2

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TABLE 4 - PPS-5 CAPITAL COST PER CASE ADJUSTED FOR CAPITAL PAYMENT VARIABLES

	NUMBER OF HOSPITALS	COST PER CASE	PERCENT DIFFERENCE FROM NATIONAL AVERAGE	HOSPITALS WITH COST PER CASE BELOW THE NATIONAL AVERAGE: PERCENT OF HOSPITALS	COST PER CASE	PERCENT DIFFERENCE FROM NATIONAL AVERAGE	HOSPITALS WITH COST PER CASE ABOVE THE NATIONAL AVERAGE: PERCENT OF HOSPITALS	COST PER CASE	PERCENT DIFFERENCE FROM NATIONAL AVERAGE
ALL HOSPITALS	4,902	403	0.0	64.3	280	-30.5	35.7	577	43.2
LARGE URBAN AREAS	1,298	428	6.1	49.7	287	-28.9	50.3	588	45.8
OTHER URBAN AREAS	1,340	393	-2.5	60.3	284	-29.6	39.7	561	39.1
RURAL AREAS	2,264	364	-9.8	75.1	258	-36.0	24.9	588	45.8
MEDICARE GROUPS									
URBAN HOSPITALS	2,638	411	2.0	55.1	285	-29.2	44.9	576	42.9
0 - 99 BEDS	534	416	3.3	65.9	257	-36.3	34.1	667	65.5
100 - 199 BEDS	702	470	16.5	46.3	272	-32.4	53.7	644	59.6
200 - 299 BEDS	549	422	4.6	51.7	281	-30.4	48.3	585	45.1
300 - 499 BEDS	588	390	-3.2	58.3	288	-28.6	41.7	550	36.4
OVER 500 BEDS	245	393	-2.5	58.8	295	-26.8	41.2	531	31.7
RURAL HOSPITALS	2,264	364	-9.8	75.1	258	-36.0	24.9	588	45.8
0 - 49 BEDS	883	293	-27.3	83.4	219	-45.7	16.6	614	52.3
50 - 99 BEDS	750	345	-14.5	75.5	246	-38.9	24.5	604	49.8
100 - 149 BEDS	345	396	-1.7	63.8	266	-33.9	36.2	599	48.6
150 - 200 BEDS	140	397	-1.6	58.6	269	-33.3	41.4	587	45.6
OVER 200 BEDS	139	366	-9.2	66.9	281	-30.2	33.1	549	36.3
TYPE OF OWNERSHIP									
VOLUNTARY	2,772	395	-1.9	64.6	283	-29.8	35.4	560	38.9
PROPRIETARY	734	524	30.0	35.8	292	-27.6	64.2	650	61.2
GOVERNMENT	1,362	340	-15.6	79.6	262	-35.1	20.4	553	37.2
TEACHING STATUS									
NON-TEACHING	3,869	412	2.1	65.9	273	-32.3	34.1	598	48.4
RESIDENT/BED RATIO LESS THAN .25	862	390	-3.1	58.7	290	-28.2	41.3	552	37.0
RESIDENT/BED RATIO .25 OR GREATER	171	407	0.9	56.7	279	-30.9	43.3	556	38.0
DISPROPORTIONATE SHARE HOSPITALS FOR OPERATING PROSPECTIVE PAYMENT SYSTEM									
NON DSH	3,541	402	-0.2	67.0	280	-30.6	33.0	584	44.8
DSH URBAN WITH MORE THAN 100 BEDS	1,009	407	1.1	52.9	283	-29.9	47.1	567	40.6
DSH URBAN WITH LESS THAN 100 BEDS	50	435	7.8	60.0	243	-39.6	40.0	690	71.1
DSH RURAL	302	359	-11.0	72.5	254	-37.0	27.5	591	46.7
PROPOSED DISPROPORTIONATE SHARE HOSPITALS UNDER CAPITAL PROSPECTIVE PAYMENT SYSTEM									
NON DSH	2,851	376	-6.6	73.0	258	-36.1	27.0	611	51.5
DSH URBAN WITH MORE THAN 100 BEDS	2,051	410	1.8	52.4	287	-28.8	47.6	571	41.5

TABLE 4 - PPS-5 CAPITAL COST PER CASE ADJUSTED FOR CAPITAL PAYMENT VARIABLES BY GEOGRAPHIC REGION

				HOSPITALS WITH COST PER CASE BELOW THE NATIONAL AVERAGE			HOSPITALS WITH COST PER CASE ABOVE THE NATIONAL AVERAGE		
	NUMBER OF HOSPITALS	COST PER CASE	PERCENT DIFFERENCE FROM NATIONAL AVERAGE	PERCENT OF HOSPITALS	COST PER CASE	PERCENT DIFFERENCE FROM NATIONAL AVERAGE	PERCENT OF HOSPITALS	COST PER CASE	PERCENT DIFFERENCE FROM NATIONAL AVERAGE
OTHER SPECIAL STATUS (RURAL)									
MEDICARE DEPENDENT	483	321	-20.4	82.8	232	-42.3	17.2	624	54.8
SOLE COMMUNITY HOSPITALS	346	367	-9.0	70.5	254	-37.0	29.5	573	42.1
RURAL REFERRAL CENTERS	205	385	-4.4	61.0	281	-30.3	39.0	560	38.8
SOLE COMMUNITY AND RURAL REFERRAL CENTERS	25	383	-5.0	56.0	262	-35.0	44.0	623	54.5
UTIL - MC PERCENT OF DAYS									
0 - 25 PERCENT	259	406	0.8	59.5	248	-38.4	40.5	642	59.2
25 - 50 PERCENT	2,652	401	-0.5	62.1	285	-29.4	37.9	568	40.8
50 - 65 PERCENT	1,563	396	-1.7	68.6	273	-32.2	31.4	577	43.1
OVER 65 PERCENT	344	472	17.1	66.3	285	-29.4	33.7	632	56.8
URBAN BY REGION	2,638	411	2.0	55.1	285	-29.2	44.9	576	42.9
NEW ENGLAND	169	328	-18.6	76.3	251	-37.7	23.7	541	34.3
MIDDLE ATLANTIC	390	379	-6.0	64.1	266	-34.0	35.9	550	36.5
SOUTH ATLANTIC	388	433	7.4	47.4	304	-24.7	52.6	589	46.0
EAST NORTH CENTRAL	478	394	-2.2	63.6	295	-26.8	36.4	547	35.6
EAST SOUTH CENTRAL	151	445	10.5	40.4	295	-26.9	59.6	580	43.8
WEST NORTH CENTRAL	167	436	8.1	50.3	294	-27.0	49.7	576	43.0
WEST SOUTH CENTRAL	321	497	23.4	35.8	304	-24.7	64.5	621	54.1
MOUNTAIN	94	449	11.6	44.7	295	-26.9	55.3	588	45.9
PACIFIC	444	399	-1.1	57.9	284	-29.5	42.1	586	45.5
PUERTO RICO	30	252	-37.4	83.3	214	-46.8	16.7	554	37.5
RURAL BY REGION	2,264	364	9.8	75.1	258	-36.0	24.9	588	45.8
NEW ENGLAND	59	281	-30.3	86.4	240	-40.4	13.6	483	19.7
MIDDLE ATLANTIC	72	317	-21.4	79.2	255	-36.8	20.8	510	26.5
SOUTH ATLANTIC	306	374	-7.2	69.6	261	-35.2	30.4	604	49.8
EAST NORTH CENTRAL	305	341	-15.4	80.3	262	-35.0	19.7	590	46.3
EAST SOUTH CENTRAL	278	384	-4.7	68.3	254	-37.0	31.7	575	42.6
WEST NORTH CENTRAL	512	337	-16.4	84.8	253	-37.3	15.2	548	35.9
WEST SOUTH CENTRAL	363	415	3.0	68.3	263	-34.8	31.7	650	61.3
MOUNTAIN	215	384	-4.7	76.3	255	-36.7	23.7	615	52.5
PACIFIC	148	376	-6.6	64.9	272	-32.6	35.1	553	37.3
PUERTO RICO	0	0	0.0	0.0	0	0.0	0.0	0	0.0

TABLE 5 - PPS-5 COMPARISON OF CASE-WEIGHTED MEANS FOR CAPITAL VARIABLES

	NUMBER OF HOSPITALS	PPS-5 COST PER CASE	AVERAGE AGE-FIXED ASSETS	AVERAGE AGE MOVEABLE EQUIPMENT	REMAINING LIFE FIXED ASSETS	RATIO OF TOTAL LIABILITIES TO TOTAL ASSETS	RATIO OF INVESTMENTS TO TOTAL ASSETS	OCCUPANCY RATIO	'VERAGE CASE MIX INDEX
ALL HOSPITALS	1,906	489	9.83	5.84	14.46	0.49	0.34	0.56	1.26
LARGE URBAN AREAS	423	568	9.12	5.70	14.09	0.54	0.35	0.62	1.31
OTHER URBAN AREAS	533	506	9.32	5.71	14.21	0.50	0.33	0.58	1.29
RURAL AREAS	950	350	11.72	6.25	15.41	0.41	0.36	0.42	1.12
URBAN HOSPITALS	956	534	9.23	5.70	14.16	0.52	0.34	0.60	1.30
0 - 99 BEDS	169	411	9.87	5.79	15.35	0.51	0.38	0.46	1.13
100 - 199 BEDS	245	509	9.08	5.52	14.40	0.56	0.32	0.54	1.20
200 - 299 BEDS	227	536	8.83	5.77	13.28	0.53	0.33	0.60	1.26
300 - 499 BEDS	222	528	9.54	5.77	14.08	0.52	0.34	0.60	1.31
OVER 500 BEDS	92	581	9.13	5.63	14.78	0.48	0.34	0.66	1.43
RURAL HOSPITALS	950	350	11.72	6.25	15.41	0.41	0.36	0.42	1.12
0 - 49 BEDS	340	254	14.20	7.55	16.26	0.35	0.39	0.28	1.01
50 - 99 BEDS	324	312	12.59	6.43	15.44	0.41	0.38	0.35	1.07
100 - 149 BEDS	149	362	10.84	6.03	14.96	0.43	0.36	0.45	1.13
150 - 200 BEDS	62	378	11.30	6.28	15.46	0.42	0.33	0.46	1.15
OVER 200 BEDS	73	406	10.72	5.66	15.39	0.41	0.36	0.52	1.20
TYPE OF OWNERSHIP									
VOLUNTARY	1,118	495	10.22	5.98	14.41	0.49	0.35	0.58	1.27
PROPRIETARY	232	608	5.66	4.77	13.68	0.65	0.28	0.53	1.26
GOVERNMENT	550	372	11.18	5.95	15.22	0.39	0.38	0.48	1.17
TEACHING STATUS									
NON-TEACHING	1,547	451	9.99	5.78	14.70	0.49	0.34	0.50	1.19
RESIDENT/BED RATIO LESS THAN .25	309	519	9.74	5.89	13.91	0.49	0.35	0.62	1.33
RESIDENT/BED RATIO .25 OR GREATER	50	697	8.87	6.05	15.14	0.53	0.36	0.73	1.47
DISPROPORTIONATE SHARE HOSPITALS FOR OPERATING PROSPECTIVE PAYMENT SYSTEM									
NON DSH	1,425	467	10.14	5.86	14.97	0.48	0.34	0.53	1.24
DSH URBAN WITH MORE THAN 100 BEDS	366	555	9.03	5.81	13.27	0.54	0.36	0.62	1.31
DSH URBAN WITH LESS THAN 100 BEDS	18	350	10.18	6.03	15.34	0.48	0.44	0.43	1.03
DSH RURAL	97	342	11.19	5.55	15.45	0.43	0.37	0.48	1.12
PROPOSED DISPROPORTIONATE SHARE HOSPITALS UNDER CAPITAL PROSPECTIVE PAYMENT SYSTEM									
NON DSH	1,133	358	11.48	6.19	15.44	0.42	0.37	0.43	1.12
DSH URBAN WITH MORE THAN 100 BEDS	773	541	9.18	5.70	14.08	0.52	0.34	0.61	1.31

TABLE 5 - PPS-5 COMPARISON OF CASE-WEIGHTED MEANS FOR CAPITAL VARIABLES

	NUMBER OF HOSPITALS	COST PER CASE	AVERAGE AGE-FIXED ASSETS	AVERAGE AGE MOVEABLE EQUIPMENT	REMAINING LIFE FIXED ASSETS	RATIO OF TOTAL LIABILITIES TO TOTAL ASSETS	RATIO OF INVESTMENTS TO TOTAL ASSETS	OCCUPANCY RATIO	AVERAGE CASE MIX INDEX
OTHER SPECIAL STATUS (RURAL)									
MEDICARE DEPENDENT	191	261	14.87	7.35	15.20	0.34	0.39	0.29	1.04
SOLE COMMUNITY HOSPITALS	125	357	10.98	6.50	14.71	0.40	0.36	0.37	1.08
RURAL REFERRAL CENTERS	101	428	10.37	5.75	15.99	0.41	0.35	0.53	1.20
SOLE COMMUNITY AND RURAL REFERRAL CENTERS	12	406	9.09	5.34	11.23	0.43	0.28	0.49	1.29
UTIL - MC % OF DAYS									
0 - 25 %	72	678	9.04	4.89	14.70	0.52	0.36	0.54	1.33
25 - 50 %	1,028	508	9.56	5.76	14.53	0.49	0.34	0.56	1.29
50 - 65 %	662	437	10.57	6.09	14.57	0.48	0.35	0.54	1.19
OVER 65 %	119	502	8.95	5.77	12.83	0.55	0.32	0.56	1.23
URBAN BY REGION	956	534	9.23	5.70	14.16	0.52	0.34	0.60	1.30
NEW ENGLAND	103	448	11.35	5.95	15.17	0.53	0.39	0.63	1.26
MIDDLE ATLANTIC	188	511	8.82	6.27	12.11	0.59	0.37	0.67	1.26
SOUTH ATLANTIC	142	532	7.52	4.88	14.08	0.53	0.31	0.61	1.32
EAST NORTH CENTRAL	164	502	10.60	6.17	14.52	0.45	0.34	0.55	1.30
EAST SOUTH CENTRAL	45	504	10.88	5.44	18.27	0.49	0.29	0.56	1.22
WEST NORTH CENTRAL	72	591	9.92	5.52	14.23	0.44	0.32	0.56	1.39
WEST SOUTH CENTRAL	89	654	7.31	4.97	14.71	0.48	0.30	0.54	1.32
MOUNTAIN	27	575	7.25	4.71	12.08	0.51	0.34	0.50	1.38
PACIFIC	124	615	9.09	5.69	15.50	0.51	0.32	0.57	1.36
PUERTO RICO	1	237	1.40	6.05	21.96	0.63	0.38	0.46	1.06
RURAL BY REGION	950	350	11.72	6.25	15.41	0.41	0.36	0.42	1.12
NEW ENGLAND	30	333	11.68	5.95	14.62	0.43	0.35	0.47	1.16
MIDDLE ATLANTIC	36	315	12.76	6.17	14.31	0.43	0.36	0.52	1.12
SOUTH ATLANTIC	121	356	10.86	5.75	16.34	0.43	0.36	0.49	1.14
EAST NORTH CENTRAL	148	330	12.74	6.42	14.45	0.39	0.37	0.38	1.12
EAST SOUTH CENTRAL	78	382	9.68	5.72	16.49	0.47	0.37	0.49	1.10
WEST NORTH CENTRAL	294	313	13.89	6.97	14.51	0.33	0.36	0.32	1.10
WEST SOUTH CENTRAL	110	380	10.29	6.57	17.01	0.41	0.37	0.39	1.11
MOUNTAIN	73	398	10.15	5.64	15.89	0.39	0.33	0.35	1.13
PACIFIC	59	416	10.84	6.19	14.88	0.45	0.36	0.46	1.17

TABLE 6 - PPS-5 CAPITAL PAYMENT SIMULATION PERCENT DIFFERENCE BETWEEN 100 PERCENT FEDERAL RATE AND CAPITAL COSTS PER CASE STANDARDIZED FOR CAPITAL AGE AND FINANCING VARIABLES

	NUMBER OF HOSPITALS	ACTUAL COST PER CASE	PERCENT CHANGE FROM ACTUAL COST PER CASE		STANDARDIZED COST PER CASE	PERCENT CHANGE FROM STANDARDIZED COST PER CASE	
			UNADJUSTED FEDERAL RATE	ADJUSTED FEDERAL RATE		UNADJUSTED FEDERAL RATE	ADJUSTED FEDERAL RATE
ALL HOSPITALS	1906	489.18	0.0	0.0	489.18	0.0	0.0
LARGE URBAN AREAS	422	568.05	-13.9	-1.3	556.32	-11.6	1.4
OTHER URBAN AREAS	533	505.65	-3.3	-0.3	504.41	-2.7	0.4
RURAL AREAS	951	350.02	39.8	3.5	368.69	30.0	-3.7
URBAN HOSPITALS	955	534.22	-8.4	-0.8	528.18	-7.0	0.9
0 - 99 BEDS	168	411.18	19.0	-0.8	395.72	21.0	0.9
100 - 199 BEDS	245	509.07	-3.9	-5.6	473.49	2.9	1.1
200 - 299 BEDS	227	535.98	-8.7	-5.2	520.32	-5.6	-1.9
300 - 499 BEDS	222	528.02	-7.4	1.0	533.38	-7.8	0.6
OVER 500 BEDS	92	580.74	-15.8	4.1	590.48	-16.2	3.5
RURAL HOSPITALS	951	350.02	39.8	3.5	368.69	30.0	-3.7
0 - 49 BEDS	341	253.94	92.6	24.8	294.88	56.7	1.5
50 - 99 BEDS	324	312.35	56.6	8.9	323.22	45.6	1.1
100 - 149 BEDS	149	362.46	35.0	1.3	375.29	28.4	-3.7
150 - 200 BEDS	62	378.07	29.4	-3.0	395.42	22.6	-8.1
OVER 200 BEDS	73	406.06	20.5	-1.7	429.21	13.6	-7.3
TYPE OF OWNERSHIP							
VOLUNTARY	1118	494.89	-1.2	1.7	508.77	-3.7	-0.9
PROPRIETARY	232	607.80	-19.5	-21.5	476.92	2.8	0.3
GOVERNMENT	550	372.14	31.5	15.4	405.57	19.1	4.6
TEACHING STATUS							
NON-TEACHING	1547	450.84	8.5	-2.5	438.08	10.8	-0.4
RESIDENT/BED RATIO LESS THAN .25	309	518.93	-5.7	4.8	539.55	-8.6	1.7
RESIDENT/BED RATIO GREATER THAN .25	50	697.50	-29.9	-3.7	709.97	-30.4	-4.5
DISPROPORTIONATE SHARE HOSPITALS UNDER OPERATING PROSPECTIVE PAYMENT SYSTEM							
NON DSH	1422	466.02	5.0	-0.6	466.68	4.6	-1.0
DSH URBAN WITH MORE THAN 100 BEDS	365	555.88	-12.0	1.0	554.14	-11.3	1.7
DSH URBAN WITH LESS THAN 100 BEDS	19	349.68	39.9	3.1	324.94	47.8	9.0
DSH RURAL	100	347.36	40.8	2.4	352.30	38.0	0.3

TABLE 6 - PPS-5 CAPITAL PAYMENT SIMULATION PERCENT DIFFERENCE BETWEEN 100 PERCENT FEDERAL RATE AND CAPITAL COSTS PER CASE STANDARDIZED FOR CAPITAL AGE AND FINANCING VARIABLES

	NUMBER OF HOSPITALS	ACTUAL COST PER CASE	PERCENT CHANGE FROM ACTUAL COST PER CASE		STANDARDIZED COST PER CASE	PERCENT CHANGE FROM STANDARDIZED COST PER CASE	
			UNADJUSTED FEDERAL RATE	ADJUSTED FEDERAL RATE		UNADJUSTED FEDERAL RATE	ADJUSTED FEDERAL RATE
DISPROPORTIONATE SHARE HOSPITALS UNDER CAPITAL PROSPECTIVE PAYMENT SYSTEM							
NON DSH	1126	359.98	35.9	2.8	373.74	28.3	-2.9
DSH URBAN WITH MORE THAN 100 BEDS	780	539.66	-9.4	-0.7	534.28	-7.9	0.8
OTHER SPECIAL STATUS (RURAL)							
MEDICARE DEPENDENT	189	262.22	86.6	23.6	301.77	54.3	-0.5
SOLE COMMUNITY HOSPITALS	143	354.18	38.1	-1.3	364.79	30.0	-9.6
RURAL REFERRAL CENTERS	102	426.19	14.8	-6.3	443.76	9.9	-12.7
SOLE COMMUNITY AND RURAL REFERRAL CENTERS	11	418.62	16.9	5.7	438.65	13.7	2.8
UTILIZATION - MEDICARE PERCENT OF DAYS							
0 - 25%	72	677.89	-27.8	-13.7	625.20	-22.0	-5.6
25 - 50%	1028	508.43	-3.8	0.1	507.30	-3.5	0.3
50 - 65%	662	436.86	12.0	1.9	447.20	9.2	-0.7
OVER 65%	119	501.68	-2.5	-9.6	465.69	5.5	-1.8
URBAN	955	534.22	-8.4	-0.8	528.18	7.0	0.9
NEW ENGLAND	103	447.73	9.3	21.3	486.72	0.7	11.7
MID ATLANTIC	188	511.20	-4.3	6.4	505.93	-2.3	8.6
SOUTH ATLANTIC	142	532.39	-8.1	-3.3	493.85	-0.1	5.2
EAST NORTH CENTRAL	164	502.33	-2.6	0.9	534.33	-8.4	-5.1
EAST SOUTH CENTRAL	45	503.88	-2.9	-7.0	503.56	-2.5	-6.7
WEST NORTH CENTRAL	72	590.57	-17.2	-9.3	610.54	-19.2	-11.5
WEST SOUTH CENTRAL	89	654.20	-25.2	-23.0	574.57	-14.7	-12.1
MOUNTAIN	27	575.11	-14.9	-3.4	544.42	-10.3	1.9
PACIFIC	123	615.39	-20.5	-3.8	593.86	-17.8	-0.5
PUERTO RICO	1	237.44	106.0	16.8	125.57	259.6	103.9
RURAL	951	350.02	39.8	3.5	368.69	30.0	-3.7
NEW ENGLAND	30	332.77	47.0	23.9	366.28	32.4	11.6
MID ATLANTIC	36	314.78	55.4	23.6	339.49	43.6	14.3
SOUTH ATLANTIC	121	355.52	37.6	2.3	360.20	34.6	0.1
EAST NORTH CENTRAL	148	330.40	48.1	10.5	366.24	30.0	-3.0
EAST SOUTH CENTRAL	78	381.55	28.2	-9.0	375.15	28.8	-8.6
WEST NORTH CENTRAL	294	313.43	56.1	8.8	358.75	32.0	-8.0
WEST SOUTH CENTRAL	110	380.46	28.6	-9.0	378.64	25.5	-11.2
MOUNTAIN	73	398.21	22.8	-4.5	364.14	30.2	1.0
PACIFIC	60	415.48	17.7	-0.8	447.57	7.5	-9.5
PUERTO RICO	0	0.00	0.0	0.0	0.00	0.0	0.0

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List of Subjects in 42 CFR Part 412

Health facilities, Medicare.

42 CFR part 412 would be amended as follows:

Subchapter B—Medicare Programs

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

I. The authority citation for part 412 continues to read as follows:

Authority: Sections 1102, 1815(e), 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395g(e), 1395hh, and 1395ww).

II. Subpart F is amended as follows:

Subpart F—Payment for Outlier Cases

1. In § 412.80, the introductory text of paragraph (a)(1) is republished, and paragraph (a)(1)(ii) is revised to read as follows:

§ 412.80 General provisions.

(a) *Basic rule.* (1) Except as provided in paragraph (a)(2) of this section concerning transferring hospitals, HCFA provides for additional payment, approximating a hospital's marginal cost of care beyond thresholds specified by HCFA, to a hospital for covered inpatient hospital services furnished to a Medicare beneficiary if either of the following conditions is met:

* * * * *

(ii) The beneficiary's length of stay does not exceed criteria established under paragraph (a)(1)(i) of this section, but the hospital's charges for covered services furnished to the beneficiary, adjusted to operating costs and, effective with cost reporting periods beginning on or after October 1, 1991, capital costs, by applying cost-to-charge ratios as described in § 412.84(h), exceed the greater of the following:

(A) A fixed dollar amount (adjusted for area wage levels) as specified by HCFA.

(B) A fixed multiple of the Federal operating rate and, effective with cost reporting periods beginning on or after October 1, 1991, Federal capital prospective rate as determined under § 412.308.

* * * * *

2. In § 412.84, paragraphs (g), (h), and (j) are revised to read as follows:

§ 412.84 Payment for extraordinarily high-cost cases (cost outliers).

* * * * *

(g) The intermediary bases the operating and capital costs of the discharge on the billed charges for covered inpatient services adjusted by the cost to charge ratios applicable to operating and capital costs, respectively, as described in paragraph (h) of this section. The costs are adjusted further to exclude, for operating costs, an estimate of indirect medical education costs and operating payments for hospitals that service a disproportionate share of low-income patients, and for capital costs, capital payments for hospitals that service a disproportionate share of low-income patients.

(h) The operating cost-to-charge ratio and, effective with cost reporting periods beginning on or after October 1, 1991, the capital cost-to-charge ratio used to adjust covered charges are computed annually by the intermediary for each hospital based on the latest available settled cost report for that hospital and charge data for the same time period as that covered by the cost report. Statewide cost-to-charge ratios are used in those instances in which a hospital's operating or capital cost-to-charge ratios fall outside reasonable parameters. HCFA sets forth these parameters and the statewide cost-to-charge ratios in each year's annual notice of prospective payment rates published under § 412.8(b).

* * * * *

(j) Except as provided in paragraph (k) of this section, the additional amount is derived by first taking 75 percent of the difference between the hospital's adjusted operating cost for the discharge (as determined under paragraph (g) of this section) and the operating threshold criteria established under § 412.80(a)(1)(ii); 75 percent is also taken of the difference between the hospital's adjusted capital cost for the discharge (as determined under paragraph (g) of this section) and the capital threshold criteria established under § 412.80(a)(1)(ii). The resulting capital amount is then multiplied by the applicable Federal portion of the payment as determined in § 412.340(a) or § 412.344(a).

* * * * *

III. A new subpart M consisting of §§ 412.300–412.374 is added to read as follows:

Subpart M—Prospective Payment System for Inpatient Hospital Capital-Related Costs

General Provisions

Sec.
412.300 Scope of subpart and definitions
412.304 Implementation of Capital Prospective Payment System

Basic Methodology for Determining the Federal Capital Prospective Payment Rate

Sec.
412.308 Determining and updating the Federal rate
412.312 Payment based on the Federal rate
412.316 Geographic adjustment factor
412.320 Disproportionate share adjustment factor

Determination of Transition Period Payment Rates for Capital-Related Costs

Sec.
412.324 General description
412.328 Determining base-year costs and determining and updating the hospital-specific rate
412.332 Payment based on the hospital-specific rate
412.336 Transition period payment methodologies
412.340 Fully prospective payment methodology
412.344 Hold-harmless payment methodology
412.348 Exception payments during transition period
412.352 Budget neutrality adjustment
412.356 Review and modification of the hospital specific rate and base-period old capital costs

Special Rules for Puerto Rico Hospitals

Sec.
412.370 General provisions for hospitals located in Puerto Rico
412.374 Payments to hospitals located in Puerto Rico

Subpart M—Prospective Payment System for Inpatient Hospital Capital-Related Costs

General Provisions

§ 412.300 Scope of subpart and definitions.

(a) *Purpose.* This subpart implements section 1886(g)(1)(A) of the Act by establishing a prospective payment system for inpatient hospital capital-related costs. Under this system, payment is made on the basis as described in §§ 412.304 through 412.374 for inpatient hospital capital-related costs furnished by hospitals subject to the prospective payment system for inpatient operating costs under subpart B of this part.

(b) *Definitions.* For purposes of this subpart, the following definitions apply:

New capital costs means allowable Medicare depreciation and interest expenses for capital assets that were first reported as being used for patient care on the hospital's Medicare cost report for a cost reporting period ending after September 30, 1990 and allowable Medicare inpatient costs for other capital-related expenses including leases, rentals (including license and royalty fees for the use of depreciable assets), insurance expense on depreciable assets, related organization capital-related costs for depreciable assets that are not maintained on the

premises of the hospital and taxes on land or depreciable assets used for patient care.

New hospital means a hospital that is newly participating in the Medicare program (under previous and present ownership) and does not have a 12-month cost reporting period ending on or before September 30, 1990, or a combination of cost reporting periods ending on or before September 30, 1990 that covers at least 12 months.

Old capital costs means allowable Medicare inpatient depreciation and interest expenses for capital assets (including depreciable assets that are maintained on the hospital's premises but are kept on the books of a related organization for recordkeeping purposes) that were reported as being used for patient care on the hospital's Medicare cost report for the latest cost reporting period ending on or before September 30, 1990 as provided in § 412.328(a).

§ 412.304 Implementation of capital prospective payment system.

(a) *General rule.* As described in sections § 412.312 through § 412.370, effective with cost reporting periods beginning on or after October 1, 1991, HCFA pays an amount determined under the capital prospective payment system for each inpatient hospital discharge as defined in § 412.4. This amount is in addition to the amount payable under the prospective payment system for inpatient hospital operating costs as determined under § 412.63.

(b) *Cost reporting periods beginning on or after October 1, 1991 and before October 1, 2001.* For cost reporting periods beginning on or after October 1, 1991 and before October 1, 2001, the capital payment amount is based on either a combined payment for old capital-related costs and new capital-related costs or a fully prospective rate, as determined under § 412.324 through § 412.348.

(c) *Cost reporting periods beginning on or after October 1, 2001.* For cost reporting periods beginning on or after October 1, 2001, the capital payment amount is based solely on the Federal rate determined under paragraphs (a) and (b) of § 412.308 and updated under paragraph (c) of § 412.308.

Basic Methodology for Determining the Federal Capital Prospective Payment Rate

§ 412.308 Determining the updating the Federal rate.

(a) *FY 1992 national average cost per discharge.* HCFA determines the FY 1992 estimated national average cost per discharge by updating the discharge weighted national average capital-related cost per discharge for FY 1988 by the estimated increase in Medicare inpatient capital costs per discharge.

(b) *Standard Federal rate.* HCFA determines the standard Federal rate by adjusting the FY 1992 updated national average cost per discharge by a factor so that estimated aggregate payments based on the standard Federal rate adjusted by the payment adjustments described in §§ 412.316 and 412.320 equal estimated aggregate payments based solely on the national average cost per discharge.

(c) *The Federal rate.* HCFA determines the Federal rate each year by adjusting the standard Federal rate by the following factors.

(1) *Update factor.* After FY 1992, HCFA updates the standard Federal rate as follows:

(i) *For FY 1993 through FY 1995.* For FY 1993 through FY 1995, the standard Federal rate is updated based on actual increases in capital-related costs per discharge that occurred two years previous to the Federal fiscal year in question, excluding the portion of the increase attributable to changes in case mix.

(ii) *Effective FY 1996.* Effective FY 1996, the standard Federal rate is updated based on an analytical framework that considers increases in the capital market basket, appropriate changes in capital requirements resulting from new technology, and other factors.

(2) *Outlier payment adjustment factor.* HCFA reduces the updated standard Federal rate by an adjustment factor equal to the proportion of total payments under the Federal rate that are additional payments for capital-related costs for outlier cases under subpart F of this part.

(3) *Exceptions payment adjustment factor.* For FY 1992 through FY 2000, HCFA reduces the updated standard Federal rate by an adjustment factor equal to the proportion of total payments under the hospital-specific rate and Federal rate that are additional payments for capital-related costs for exceptions under § 412.348.

(4) *Budget neutrality adjustment factor.* For FY 1992 through FY 1995, HCFA adjusts the updated standard Federal rate by a budget neutrality factor determined under § 412.352.

§ 412.312 Payment based on the Federal rate.

(a) *General.* The payment amount for each discharge based on the Federal rate determined under § 412.308(c) is determined under the following formula: (Federal rate × DRG weight × Geographic adjustment factor × Disproportionate share adjustment factor) + (Any applicable outlier payment).

(b) *Payment adjustments*—(1) *DRG weights.* The relative resource requirements of the discharge are taken into account by using the DRG weighting factor that is applied to the prospective payment system for operating costs under § 412.60.

(2) *Geographic adjustment.* A geographic adjustment factor is applied that takes into account geographic variation in capital-related costs and, for a hospital in a large urban area, an additional factor that reflects its location.

(3) *Disproportionate share adjustment.* For hospitals with at least 100 beds located in an urban area and serving low-income patients, a disproportionate share adjustment factor is applied that reflects the higher costs attributable to furnishing services to low income patients.

(c) *Additional payment for outlier cases.* Payment is made for day outlier cases as provided for in § 412.82 and for cost outlier cases if both capital-related and noncapital-related costs exceed the cost outlier threshold as provided for in § 412.84.

§ 412.316 Geographic adjustment factor.

(a) *Local cost variation.* HCFA adjusts for local cost variation based on the hospital wage index value that is applicable to the hospital under § 412.63(k). The adjustment factor increases by 4.6 percent for each 10 percent increase in the hospital wage index and is applied to 100 percent of the Federal rate.

(b) *Large urban location.* HCFA provides an additional payment to a hospital located in a large urban area as defined in § 412.63(c)(6) equal to 1.6 percent of what would otherwise be payable to the hospital based on the Federal rate.

§ 412.320 Disproportionate share adjustment factor.

(a) *Criteria for classification.* A hospital is classified as a "disproportionate share hospital" for the purposes of capital prospective payments if the hospital is located in an urban area, has 100 or more beds, and serves low-income patients, as determined under the provisions in § 412.106 of this part.

(b) *Payment adjustment factor.* If a hospital meets the criteria in paragraph (a) of this section, the disproportionate share payment adjustment is determined by increasing the hospital's payment by

approximately 4.2 percent of each 10 percent increase in the hospital's disproportionate patient percentage as determined under § 412.106(b)(5) of this part.

Determination of Transition Period Payment Rates for Capital-Related Costs

§ 412.324 General description.

(a) *Hospitals under Medicare in FY 1991.* During the initial ten-year transition period, payments to a hospital with a hospital-specific rate below the Federal rate are based on the fully prospective payment methodology under § 412.340 or for a hospital with a hospital-specific rate above the Federal rate, the hold-harmless payment methodology under § 412.344.

(b) *New hospitals.* A new hospital, as defined under § 412.300(b), is paid based on the fully prospective payment methodology under § 412.340.

§ 412.328 Determining base-year costs and determining and updating the hospital-specific rate.

(a) *Base-year cost reporting period.* (1) For each hospital, the intermediary uses the hospital's latest 12-month or longer cost reporting period ending after September 30, 1989 and on or before September 30, 1990 as the base period—

(i) To determine a hospital's hospital-specific rate; and

(ii) To identify its old capital costs that could qualify for a hold-harmless payment.

(2) If the hospital's last cost reporting period ending in FY 1990 is for less than 12 months, the fiscal intermediary uses the combination of cost reporting periods ending on or before September 30, 1990 that cover at least 12 months.

(3) A hospital with 52–53 week fiscal year period ending September 25 through 29 of the calendar year is deemed to have a cost reporting period beginning October 1 of each year.

(4) The base-year cost reporting period for a new hospital is its first 12-month cost reporting period or combination of cost reporting periods that cover at least 12 months.

(b) *Base-year costs per discharge.* (1) HCFA determines the base year allowable inpatient capital costs per discharge for the hospital by dividing the hospital's total allowable Medicare inpatient capital-related cost in the base year by the number of Medicare discharges in the base year.

(2) For the purpose of determining a hospital's base period capital costs per discharge, a discharge includes discharges defined in § 412.4(a) and transfers defined in § 412.4(b).

(3) In determining the hospital's base period capital costs per discharge, no distinction is made between old capital costs and new capital costs.

(c) *Case-mix adjustment.* HCFA adjusts the base period capital costs per discharge for each hospital by the hospital's case mix index for the cost reporting period.

(d) *Updating to Federal fiscal year 1992.* HCFA updates the case-mix adjusted base period costs per discharge to Federal fiscal year 1992 based on the national average increase in Medicare inpatient capital costs per discharge, as estimated by HCFA, excluding the portion of the increase in capital costs per discharge attributable to changes in case mix.

(e) *Hospital-spectific rate.* HCFA determines the hospital-specific rate each year by adjusting the amount determined under paragraph (d) of this section for the following factors:

(1) *Update factor.* After FY 1992, HCFA updates the hospital-specific rate in accordance with § 412.308(c)(1).

(2) *Exceptions payments adjustment factor.* HCFA reduces the updated amount determined in paragraph (d) of this section by an adjustment factor equal to the proportion of the total amount of payments under the hospital-specific rate and Federal rate that are additional payments for capital-related costs for exceptions under § 412.348.

(3) *Budget neutrality adjustment factor.* For FY 1992 through FY 1995, HCFA adjusts the updated amount determined in paragraph (d) of this section by a budget neutrality adjustment factor determined under § 412.352.

§ 412.332 Payment based on the hospital-specific rate.

The payment amount for each discharge based on the hospital-specific rate determined under § 412.328(e) is determined by multiplying the applicable hospital-specific rate by the DRG weighting factor applicable to the discharge under § 412.60.

§ 412.336 Transition period payment methodologies.

(a) *General.* For discharges occurring in cost reporting periods beginning on or after October 1, 1991 and before October 1, 2001, a hospital is paid under one of two payment methodologies described in §§ 412.340 and 412.344.

(b) *Hospital-specific rate below the Federal rate.* A hospital with a hospital-specific rate below the Federal rate (after taking into account the estimated effect of the payment adjustments and outlier payments) is paid under the fully prospective payment methodology as described in § 412.340.

(c) *Hospital-specific rate above the Federal rate.* A hospital with a hospital-specific rate that is above the Federal rate (after taking into account the estimated effect of the payment adjustments and outlier payments) is paid under the hold-harmless payment methodology as described in § 412.344.

(d) *Special rule.* A hospital that has a hospital-specific rate below the Federal rate but FY 1992 allowable capital costs above the Federal rate (after taking into account the effect of the payment adjustments and outlier payments) is paid on the basis of either the fully prospective payment methodology or the hold-harmless payment methodology, depending on which of the two payment methodologies is determined to be most advantageous to the hospital in FY 1992. The hospital will continue to be paid throughout the transition period based on the payment methodology determined to be applicable for FY 1992.

§ 412.340 Fully prospective payment methodology.

(a) *General.* A hospital paid under the fully prospective payment methodology receives capital payments per discharge based on a blend of payments based on its hospital-specific rate and the Federal rate as follows:

Cost reporting periods beginning on or after	Federal rate percentage	Hospital-specific rate percentage
Oct. 1, 1991	10	90
Oct. 1, 1992	20	80
Oct. 1, 1993	30	70
Oct. 1, 1994	40	60
Oct. 1, 1995	50	50
Oct. 1, 1996	60	40
Oct. 1, 1997	70	30
Oct. 1, 1998	80	20
Oct. 1, 1999	90	10
Oct. 1, 2000	100	0

(b) *New hospitals.* If a new hospital's base year cost reporting period begins on or after October 1, 1991, the hospital-specific portion of its payments for that cost reporting period is based on the hospital's allowable inpatient capital-related costs in that cost reporting period.

§ 412.344 Hold-harmless payment methodology.

(a) *General.* A hospital paid under the hold-harmless payment methodology receives capital payments per discharge based on the higher of:

(1) 90 percent of reasonable costs for old capital costs (subject to a budget neutrality adjustment under § 412.352) plus a payment for new capital costs per discharge based on a proportion of the

Federal rate. The proportion is based on the ratio of the hospital's Medicare inpatient costs for new capital to total Medicare inpatient capital costs but may not exceed the national ratio of Medicare inpatient new capital costs to total Medicare inpatient capital costs as estimated by HCFA; or

(2) 100 percent of payments based on the Federal rate, or, in the case of a hospital that qualifies for the hold harmless payment under § 412.336(d), the blend of the hospital's hospital-specific rate and Federal rate provided under § 412.340(a).

(b) *Continued basis of payment.* A hospital paid based on 100 percent of the Federal rate (or a blend of its hospital-specified rate and the Federal rate) continues to be paid on that basis in subsequent cost reporting periods during the transition period and does not receive a reasonable cost payment for old capital-related costs.

(c) *Basis of determination.* The determination under paragraph (a) of this section regarding which payment alternative is applicable is made without regard to additional payments under the exceptions process under § 412.348.

(d) *Interim and final payment determinations.* (1) Using the best data available, the intermediary makes interim payments during the cost reporting period based on an interim determination under paragraph (a) of this section concerning the applicable payment alternative, and, in the case of payment under paragraph (a)(1) of this section, the payment amounts for old and new capital.

(2) The final determination of the amount payable under paragraph (a) of this section is based on final settlement of the Medicare cost report for the applicable cost reporting period. This final determination is subject to administrative and judicial review in accordance with subpart R of part 405 of this chapter, governing provider reimbursement determinations and appeals.

§ 412.348 Exception payments during transition period.

(a) *Financially disadvantaged hospitals.* An additional payment is made to each hospital paid under either the fully prospective payment methodology or the hold-harmless payment methodology that is financially disadvantaged during the transition period as determined under paragraph (b) of this section.

(b) *Eligibility and types of additional payment.* (1) For FY 1992, if any hospital's capital costs exceed 150 percent of the capital payments it would have received in FY 1992 without an exceptions process, the hospital is paid an additional amount equal to 75 percent of its costs in excess of the 150 percent threshold.

(2) For FY 1992, an urban hospital with more than 100 beds and a disproportionate share percentage of at least 30 percent or a rural sole community hospital is paid as follows:

(i) If the hospital's inpatient capital cost per discharge is not more than 1.5 times its hospital-specific rate, the hospital is paid an additional amount equal to 75 percent of its Medicare inpatient capital costs in excess of 125 percent of its Medicare inpatient capital payments.

(ii) If the hospital's inpatient capital cost per discharge is 3.0 or more times its hospital-specific rate, the hospital is paid an additional amount equal to 75 percent of its Medicare inpatient capital costs in excess of 100 percent of its Medicare capital payments.

(iii) If the hospital's inpatient capital cost per discharge is between 1.5 and 3.0 times its hospital-specific rate, the hospital is paid an additional amount equal to 75 percent of its Medicare inpatient capital cost in excess of the percent threshold calculated by the following formula: [(3.0)−(the hospital's capital cost per discharge÷its hospital-specific rate)×(16.67)+(100 percent)].

(3) The total amount payable under paragraph (b)(2) of this section is limited to an amount equal to the difference between the hospital's total Medicare inpatient costs and its total Medicare inpatient payments during the cost reporting period.

(c) *Limitation on amount of overall payments.* Beginning with FY 1993, if application of the criteria in paragraph (b) of this section would result in estimated exceptions payments that exceed 10 percent of total capital prospective payments to be made in a Federal fiscal year, the criteria in paragraph (b) of this section will be adjusted so that estimated exceptions payments approximate 10 percent of total capital prospective payments in that Federal fiscal year.

§ 412.352 Budget neutrality adjustment.

(a) *General.* For FY 1992 through FY 1995, HCFA adjusts capital payments so that aggregate payments under this subpart for hospital inpatient capital costs each fiscal year equal 90 percent of what HCFA estimates would have been paid for capital-related costs on a reasonable cost basis under § 413.130.

(b) *Positive adjustment.* If the budget neutrality adjustment is greater than 1.0, a percentage increase is applied to the Federal rate and the hospital-specific rate.

(c) *Negative adjustment.* If the budget neurality adjustment is less than 1.0, a percentage reduction is applied to the Federal rate, the hospital-specific rate, and the hold-harmless payments.

§ 412.356 Review and modification of the hospital-specific rate and base-period old capital costs.

(a) *Determination and notice.* The intermediary notifies the hospital of its determination of the hospital-specific rate and base-period old capital costs.

(b) *Right to administrative and judicial review.* (1) The intermediary's determinations of the hospital-specific rate and base-period old capital costs are considered final intermediary determinations of the amount of program reimbursement for purposes of subpart R of part 405 of this chapter, governing provider payment determinations and appeals, and are subject to administrative and judicial review.

(2) Administrative review is available to a hospital upon receipt of the notice of its hospital-specific rate or base-period old capital costs.

(c) *Modification of determination of hospital-specific rate or old capital costs.* (1) The intermediary adjusts the hospital-specific rate or the base-period old capital costs to reflect any modifications that result from administrative or judicial review of the intermediary's determinations of the base-period allowable costs, the hospital-specific rate, or the base-period old capital costs.

(2) Adjustments to the hospital-specific rate or the base-period old capital costs made under this paragraph are effective retroactively to the date of the intermediary's initial determination.

Special Rules for Puerto Rico Hospitals

§ 412.370 General provisions for hospitals located in Puerto Rico.

Except as provided in § 412.374, hospitals located in Puerto Rico are subject to the rules in this subpart governing the prospective payment system for inpatient hospital capital-related costs.

§ 412.374 Payments to hospitals located in Puerto Rico.

Payments for capital-related costs to hospitals located in Puerto Rico that are paid under the prospective payment system are equal to the sum of—

(a) 75 percent of a Puerto Rico capital rate based on data from Puerto Rico hospitals only, which is determined in accordance with procedures for developing the Federal rate and

(b) 25 percent of the Federal rate, as determined under § 412.308.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: January 26, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: February 19, 1991

Louis W. Sullivan,

Secretary.

TABLE 1—STANDARD FEDERAL PAYMENT RATE

	Rate
National	471.54
Puerto Rico	295.82

TABLE 2a—GEOGRAPHIC ADJUSTMENT FACTORS WAGE INDEX FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Geographic adjustment factor
Abilene, TX	0.9641
Taylor, TX	
Aguadilla, PR	.6979
Aguada, PR	
Aguadilla, PR	
Isabella, PR	
Moca, PR	
Akron, OH	.9747
Portage, OH	
Summit, OH	
Albany, GA	.9056
Dougherty, GA	
Lee, GA	
Albany-Schenectady-Troy, NY	.9496
Albany, NY	
Greene, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Albuquerque, NM	1.0066
Bernalillo, NM	
Alexandria, LA	.9172
Rapides, LA	
Allentown-Bethlehem-Easton, PA-NJ	.9938
Warren, NJ	
Carbon, PA	
Lehigh, PA	
Northampton, PA	
Altoona, PA	.9650
Blair, PA	
Amarillo, TX	.9406
Potter, TX	
Randall, TX	
Anaheim-Santa Ana, CA [1]	1.1055
Orange, CA	
Anchorage, AK	1.1757
Anchorage, AK	
Anderson, IN	.9814
Madison, IN	
Anderson, SC	.8634
Anderson, SC	
Ann Arbor, MI	1.0626
Washtenaw, MI	
Anniston, AL	.8994
Calhoun, AL	
Appleton-Oshkosh-Neenah, WI	.9621
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
Arecibo, PR	.6524
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
Quebradillas, PR	
Asheville, NC	.9406
Buncombe, NC	
Athens, GA	.9138
Clarke, GA	
Jackson, GA	
Madison, GA	
Oconee, GA	
Atlanta, GA [1]	.9978
Barrow, GA	
Butts, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
Atlantic City, NJ	1.0240
Atlantic, NJ	
Cape May, NJ	
Augusta, GA-SC	.9728
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Aurora-Elgin, IL	.9853
Kane, IL	
Kendall, IL	
Austin, TX	.9822
Hays, TX	
Travis, TX	
Williamson, TX	
Bakersfield, CA	1.0401
Kern, CA	
Baltimore, MD [1]	1.0242
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
Bangor, ME	.9566
Penobscot, ME	
Baton Rouge, LA	.9578
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
Battle Creek, MI	.9759
Calhoun, MI	
Beaumont-Port Arthur, TX	.9824
Hardin, TX	
Jefferson, TX	
Orange, TX	
Beaver County, PA	1.0085
Beaver, PA	
Bellingham, WA	1.0235
Whatcom, WA	
Benton Harbor, MI	.9103
Berrien, MI	
Bergen-Passaic, NJ [1]	1.0307
Bergen, NJ	
Passaic, NJ	
Billings, MT	.9691
Yellowstone, MT	
Biloxi-Gulfport, MS	.9063
Hancock, MS	
Harrison, MS	
Binghamton, NY	.9660
Broome, NY	
Tioga, NY	
Birmingham, AL	.9421
Blount, AL	
Jefferson, AL	
Saint Clair, AL	
Shelby, AL	
Walker, AL	
Bismarck, ND	.9442
Burleigh, ND	
Morton, ND	
Bloomington, IN	.9356
Monroe, IN	
Bloomington-Normal, IL	.9366
McLean, IL	
Boise City, ID	.9896
Ada, ID	
Boston-Lawrence-Salem-Lowell-Brockton, MA [1]	1.0980
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Boulder-Longmont, CO	1.0078
Boulder, CO	
Bradenton, FL	.9661
Manatee, FL	
Brazoria, TX	.9610
Brazoria, TX	
Bremerton, WA	.9792
Kitsap, WA	
Bridgeport-Stamford-Norwalk-Danburym CT	1.0901
Fairfield, CT	
Brownsville-Harlingen, TX	.9337
Cameron, TX	
Bryan-College Station, TX	.9770
Brazos, TX	
Buffalo, NY	9489
Erie, NY	
Burlington, NC	.9023
Alamance, NC	
Burlington, VT	.9708
Chittenden, VT	
Grand Isle, VT	
Caguas, PR	.6911
Caguas, PR	
Gurabo, PR	
San Lorenz, PR	
Aguas Burenas, PR	
Cayey, PR	
Cidra, PR	
Canton, OH	.9388
Carroll, OH	
Stark, OH	
Casper, WY	.9481
Natrona, WY	
Cedar Rapids, IA	.9489
Linn, IA	
Champaign-Urbana-Rantoul, IL	.9409
Champaign, IL	
Charleston, SC	.9201

TABLE 2a—GEOGRAPHIC ADJUSTMENT FACTORS WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Geographic adjustment factor
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
Charleston, WV	.9866
Kanawha, WV	
Putnam, WV	
Charlotte-Gastonia-Rock Hill, NC-SC [1]	.9925
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
Charlottesville, VA	.9830
Albermarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
Chattanooga, TN-GA	.9630
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
Sequatchie, TN	
Cheyenne, WY	.8982
Laramie, WY	
Chicago, IL [1]	1.0409
Cook, IL	
Du Page, IL	
McHenry, IL	
Chico, CA	1.0253
Butte, CA	
Cincinnati, OH-KY-IN [1]	1.0085
Dearborn, IN	
Boone, KY	
Campbell, KY	
Kenton, KY	
Clermont, OH	
Hamilton, OH	
Warren, OH	
Clarksville-Hopkinsville, TN-KY	.8668
Christian, KY	
Montgomery, TN	
Cleveland, OH [1]	1.0509
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Medina, OH	
Colorado Springs, CO	.9924
El Paso, CO	
Columbia, MO	.9778
Boone, MO	
Columbia, SC	.9505
Lexington, SC	
Richland, SC	
Columbus, GA-AL	.8756
Russell, AL	
Chattanoochee, GA	
Muscogee, GA	
Columbus, OH [1]	1.0014
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
Union, OH	
Corpus Christi, TX	.9334
Nueces, TX	
San Patricio, TX	
Cumberland, MD-WV	.9127
Allegeny, MD	
Mineral, WV	
Dallas, TX [1]	.9893
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Kaufman, TX	
Rockwall, TX	
Danville, VA	.8769
Danville City, VA	
Pittsylvania, VA	
Davenport-Rock Island-Moline, IA-IL	.9271
Scott, IA	
Henry, IL	
Rock Island, IL	
Dayton-Springfield, OH	.9853
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
Daytona Beach, FL	.9507
Volusia, FL	
Decatur, AL	.8759
Lawrence, AL	
Morgan, AL	
Decatur, IL	.9178
Macon, IL	
Denver, CO [1]	1.0518
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
Des Moines, IA	.9617
Dallas, IA	
Polk, IA	
Warren, IA	
Detroit, MI [1]	1.0546
Lapeer, MI	
Livingston, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
Saint Clair, MI	
Wayne, MI	
Dothan, AL	.8795
Dale, AL	
Houston, AL	
Dubuque, IA	.9223
Dubuque, IA	
Duluth, MN-WI	.9783
St. Louis, MN	
Douglas, WI	
Eau Claire, WI	.9275
Chippewa, WI	
Eau Claire, WI	
El Paso, TX	.9393
El Paso, TX	
Elkhart-Goshen, IN	.9509
Elkhart, IN	
Elmira, NY	.9441
Chemung, NY	
Enid, OK	.9491
Garfield, OK	
Erie, PA	.9610
Erie, PA	
Eugene-Springfield, OR	.9983
Lane, OR	
Evansville, IN-KY	.9668
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
Fargo-Moorhead, ND-MN	.9873
Clay, MN	
Cass, ND	
Fayetteville, NC	.9183
Cumberland, NC	
Fayetteville-Springdale, AR	.9025
Washington, AR	
Flint, MI	1.0694
Genesee, MI	
Florence, AL	.8861
Colbert, AL	
Lauderdale, AL	
Florence, SC	.9250
Florence, SC	
Fort Collins-Loveland, CO	1.0118
Larimor, CO	
Fort Lauderdale-Hollywood-Pompano Beach, FL [1]	1.0335
Broward, FL	
Fort Myers-Cape Coral, FL	.9916
Lee, FL	
Fort Pierce, FL	1.0477
Martin, FL	
St. Lucie, FL	
Fort Smith, AR-OK	.8994
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
Fort Walton Beach, FL	.9493
Okaloosa, FL	
Fort Wayne, IN	.9486
Allen, IN	
De Kalb, IN	
Whitley, IN	
Fort Worth-Arlington, TX [1]	.9925
Johnson, TX	
Parker, TX	
Tarrant, TX	
Fresno, CA	1.0343
Fresno, CA	
Gadsden, AL	.9133
Etowah, AL	
Gainesville, FL	9435
Alachua, FL	
Bradford, FL	
Galveston-Texas City, TX	.9737
Galveston, TX	
Gary-Hammond, IN	.9941
Lake, IN	
Porter, IN	
Glens Falls, NY	.9646
Warren, NY	
Washington, NY	
Grand Forks, ND	.9812
Grand Forks, ND	
Grand Rapids, MI	.9955
Kent, MI	
Ottawa, MI	
Great Falls, MT	1.0005
Cascade, MT	
Greeley, CO	.9707
Weld, CO	
Green Bay, WI	.9815
Brown, WI	
Greensboro-Winston-Salem-High Point, NC	.9412
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
Greenville-Spartanburg, SC	.9487

TABLE 2a—GEOGRAPHIC ADJUSTMENT FACTORS WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Geographic adjustment factor
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
Hagerstown, MD	.9611
Washington, MD	
Hamilton-Middletown, OH	.9720
Butler, OH	
Harrisburg-Lebanon-Carlisle, PA	.9971
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Hartford-Middletown-New Britain-Bristol, CT [1]	1.1026
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
Hickory, NC	.9407
Alexander, NC	
Burke, NC	
Catawba, NC	
Honolulu, HI	1.0710
Honolulu, HI	
Houma-Thibodaux, LA	.8589
Lafourche, LA	
Terrebonne, LA	
Houston, TX [1]	1.0064
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
Huntington-Ashland, WV-KY-OH	.9745
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
Huntsville, AL	.9453
Madison, AL	
Indianapolis, IN [1]	.9964
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
Iowa City, IA	.9788
Johnson, IA	
Jackson, MI	.9853
Jackson, MI	
Jackson, MS	.8890
Hinds, MS	
Madison, MS	
Rankin, MS	
Jackson, TN	.8983
Madison, TN	
Jacksonville, FL	.9559
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
Jacksonville, NC	.8576
Onslow, NC	
Jamestown-Dunkirk, NY	.8891
Chatauqua, NY	
Janesville-Beloit, WI	.9269
Rock, WI	
Jersey City, NJ	1.0249
Hudson, NJ	
Johnson City-Kingsport-Bristol, TN-VA	.9370
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
Johnston, PA	.9567
Cambria, PA	
Somerset, PA	
Joliet, IL	1.0137
Grundy, IL	
Will, IL	
Joplin, MO	.8968
Jasper, MO	
Newton, MO	
Kalamazoo, MI	1.0765
Kalamazoo, MI	
Kankakee, IL	.9280
Kankakee, IL	
Kansas City, KS-MO [1]	.9974
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
Kenosha, WI	.9463
Kenosha, WI	
Killeen-Temple, TX	1.0587
Bell, TX	
Coryell, TX	
Knoxville, TN	.9361
Anderson, TN	
Blount, TN	
Grainger, TN	
Jefferson, TN	
Knox, TN	
Sevier, TN	
Union, TN	
Kokomo, IN	.9989
Howard, IN	
Tipton, IN	
LaCrosse, WI	.9513
LaCrosse, WI	
Lafayette, LA	.9147
Lafayette, LA	
St. Martin, LA	
Lafayette, IN	.9252
Tippecanoe, IN	
Lake Charles, LA	.9223
Calcasieu, LA	
Lake County, IL	1.0006
Lake, IL	
Lakeland-Winter Haven, FL	.9119
Polk, FL	
Lancaster, PA	.9659
Lancaster, PA	
Lansing-East Lansing, MI	1.0111
Clinton, MI	
Eaton, MI	
Ingham, MI	
Laredo, TX	.8645
Webb, TX	
Las Cruces, NM	.8983
Dona Ana, NM	
Las Vegas, NV	1.0296
Clark, NV	
Lawrence, KS	.9503
Douglas, KS	
Lawton, OK	.9230
Comanche, OK	
Lewiston-Auburn, ME	.9562
Androscoggin, ME	
Lexington-Fayette, KY	.9259
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Scott, KY	
Woodford, KY	
Lima, OH	.9078
Allen, OH	
Auglaize, OH	
Lincoln, NE	.9513
Lancaster, NE	
Little Rock-North Little Rock, AR	.9246
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
Longview-Marshall, TX	.9382
Gregg, TX	
Harrison, TX	
Lorain-Elyria, OH	.9510
Lorain, OH	
Los Angeles-Long Beach, CA [1]	1.1211
Los Angeles, CA	
Louisville, KY-IN	.9579
Clark, IN	
Floyd, IN	
Harrison, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
Shelby, KY	
Lubbock, TX	.9431
Lubbock, TX	
Lynchburg, VA	.9309
Amherst, VA	
Campbell, VA	
Lynchburg City, VA	
Macon-Warner Robins, GA	.9438
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Madison, WI	1.0151
Dane, WI	
Manchester-Nashua, NH	1.0129
Hillsborough, NH	
Merrimack, NH	
Mansfield, OH	.9232
Richland, OH	
Mayaguez, PR	.7115
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
San German, PR	
McAllen-Edinburg-Mission, TX	.8568
Hidalgo, TX	
Medford, OR	1.0030
Jackson, OR	
Melbourne-Titusville, FL	.9631
Brevard, FL	
Memphis, TN-AR-MS	.9564
Crittenden, AR	
De Soto, MS	
Shelby, TN	
Tipton, TN	
Merced, CA	1.0152
Merced, CA	
Miami-Hialeah, FL [1]	1.0257

TABLE 2a—GEOGRAPHIC ADJUSTMENT FACTORS WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Geographic adjustment factor
Dade, FL	
Middlesex-Somerset-Hunterdon, NJ	1.0192
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
Midland, TX	1.0181
Midland, TX	
Milwaukee, WI [1]	1.0036
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
Minneapolis-St. Paul, MN-WI [1]	1.0545
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Washington, MN	
Wright, MN	
St. Croix, WI	
Mobile, AL	.9195
Baldwin, AL	
Mobile, AL	
Modesto, CA	1.0708
Stanislaus, CA	
Monmouth-Ocean, NJ	.9963
Monmouth, NJ	
Ocean, NJ	
Monroe, LA	.8959
Ouachita, LA	
Montgomery, AL	.8693
Autauga, AL	
Elmore, AL	
Montgomery, AL	
Muncie, IN	.9066
Delaware, IN	
Muskegon, MI	.9807
Muskegon, MI	
Naples, FL	1.0157
Collier, FL	
Nashville, TN	.9726
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
Nassau-Suffolk, NY [1]	1.1460
Nassau, NY	
Suffolk, NY	
New Bedford-Fall River-Attleboro, MA	.9977
Bristol, MA	
New Haven-Waterbury-Meriden, CT	1.0927
New Haven, CT	
New London-Norwich, CT	1.0706
New London, CT	
New Orleans, LA [1]	.9637
Jefferson, LA	
Orleans, LA	
St. Bernard, LA	
St. Charles, LA	
St. John The Baptist, LA	
St. Tammany, LA	
New York, NY [1]	1.1663
Bronx, NY	
Kings, NY	
New York City, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
Newark, NJ [1]	1.0729
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Niagara Falls, NY	.9226
Niagara, NY	
Norfolk-Virginia Beach-Newport News, VA [1]	.9443
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
James City Co., VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
Oakland, CA [1]	1.1986
Alameda, CA	
Contra Costa, CA	
Ocala, FL	.9344
Marion, FL	
Odessa, TX	1.0378
Ector, TX	
Oklahoma City, OK	.9605
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
Olympia, WA	1.0459
Thurston, WA	
Omaha, NE-IA	.9529
Pottawattamie, IA	
Douglas, NE	
Sarpy, NE	
Washington, NE	
Orange County, NY	.9847
Orange, NY	
Orlando, FL	.9825
Orange, FL	
Osceola, FL	
Seminole, FL	
Owensboro, KY	.9090
Daviess, KY	
Oxnard-Ventura, CA	1.1015
Ventura, CA	
Panama City, FL	.9353
Bay, FL	
Parkersburg-Marietta, WV-OH	.9306
Washington, OH	
Wood, WV	
Pascagoula, MS	.9414
Jackson, MS	
Pensacola, FL	.9349
Escambia, FL	
Santa Rosa, FL	
Peoria, IL	.9391
Peoria, IL	
Tazewell, IL	
Woodford, IL	
Philadelphia, PA-NJ [1]	1.0605
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
Phoenix, AZ [1]	1.0368
Maricopa, AZ	
Pine Bluff, AR	.8964
Jefferson, AR	
Pittsburgh, PA [1]	1.0229
Allegheny, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
Pittsfield, MA	1.0363
Berkshire, MA	
Ponce, PR	.6997
Juana Diaz, PR	
Ponce, PR	
Portland, ME	.9676
Cumberland, ME	
Sagadahoc, ME	
York, ME	
Portland, OR [1]	1.0874
Clackamas, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Portsmouth-Dover-Rochester, NH	1.0046
Rockingham, NH	
Strafford, NH	
Poughkeepsie, NY	1.0213
Dutchess, NY	
Providence-Pawtucket-Woonsocket, RI [1]	1.0454
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
Provo-Orem, UT	1.0115
Utah, UT	
Pueblo, CO	.9397
Pueblo, CO	
Racine, WI	.9461
Racine, WI	
Raleigh-Durham, NC	.9759
Durham, NC	
Franklin, NC	
Orange, NC	
Wake, NC	
Rapid City, SD	.9236
Pennington, SD	
Reading, PA	.9430
Berks, PA	
Redding, CA	1.0259
Shasta, CA	
Reno, NV	1.0726
Washoe, NV	
Richland-Kennewick, WA	.9729
Benton, WA	
Franklin, WA	
Richmond-Petersburg, VA	.9736

TABLE 2a—GEOGRAPHIC ADJUSTMENT FACTORS WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Geographic adjustment factor
Charles City Co., VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
Riverside-San Bernardino, CA [1]	1.0694
Riverside, CA	
San Bernardino, CA	
Roanoke, VA	.9177
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
Rochester, MN	1.0472
Olmsted, MN	
Rochester, NY	.9874
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
Rockford, IL	.9671
Boone, IL	
Winnebago, IL	
Sacramento, CA [1]	1.1160
Eldorado, CA	
Placer, CA	
Sacramento, CA	
Yolo, CA	
Saginaw-Bay City-Midland, MI	1.0063
Bay, MI	
Midland, MI	
Saginaw, MI	
St. Cloud, MN	.9737
Benton, MN	
Sherburne, MN	
Stearns, MN	
St. Joseph, MO	.9734
Buchanan, MO	
St. Louis, MO-IL [1]	.9878
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Salem, OR	1.0212
Marion, OR	
Polk, OR	
Salinas-Seaside-Monterey, CA	1.1313
Monterey, CA	
Salt Lake City-Ogden, UT [1]	1.0137
Davis, UT	
Salt Lake, UT	
Weber, UT	
San Angelo, TX	.9102
Tom Green, TX	
San Antonio, TX [1]	.9405
Bexar, TX	
Comal, TX	
Guadalupe, TX	
San Diego, CA [1]	1.0992

TABLE 2a—GEOGRAPHIC ADJUSTMENT FACTORS WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Geographic adjustment factor
San Diego, CA	
San Francisco, CA [1]	1.2085
Marin, CA	
San Francisco, CA	
San Mateo, CA	
San Jose, CA [1]	1.2127
Santa Clara, CA	
San Juan, PR [1]	.7378
Barcelona, PR	
Bayoman, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trojillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Santa Barbara-Santa Maria-Lompoc, CA	1.0790
Santa Barbara, CA	
Santa Cruz, CA	1.1209
Santa Cruz, CA	
Santa Fe, NM	.9602
Los Alamos, NM	
Santa Fe, NM	
Santa Rosa-Petaluma, CA	1.1273
Sonoma, CA	
Sarasota, FL	.9907
Sarasota, FL	
Savannah, GA	.9199
Chatham, GA	
Effingham, GA	
Scranton-Wilkes Barre, PA	.9511
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Monroe, PA	
Wyoming, PA	
Seattle, WA [1]	1.0568
King, WA	
Snohomish, WA	
Sharon, PA	.9564
Mercer, PA	
Sheboygan, WI	.9471
Sheboygan, WI	
Sherman-Denison, TX	.9578
Grayson, TX	
Shreveport, LA	.9679
Bossier, LA	
Caddo, LA	
Sioux City, IA-NE	.9288
Woodbury, IA	
Dakota, NE	
Sioux Falls, SD	.9452
Minnehaha, SD	
South Bend-Mishawaka, IN	1.0040
St. Jospeh, IN	
Spokane, WA	1.0323
Spokane, WA	
Springfield, IL	.9678

TABLE 2a—GEOGRAPHIC ADJUSTMENT FACTORS WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Geographic adjustment factor
Menard, IL	
Sangamon, IL	
Springfield, MO	.9073
Christian, MO	
Greene, MO	
Springfield, MA	1.0154
Hampden, MA	
Hampshire, MA	
State College, PA	.9963
Centre, PA	
Steubenville-Weirton, OH-WV	.9392
Jefferson, OH	
Brooke, WV	
Hancock, WV	
Stockton, CA	1.0723
San Joaquin, CA	
Syracuse, NY	.9804
Madison, NY	
Onondaga, NY	
Oswego, NY	
Tacoma, WA	1.0154
Pierce, WA	
Tallahassee, FL	.9641
Gadsden, FL	
Leon, FL	
Tampa-St. Petersburg-Clearwater, FL [1]	.9780
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
Terre Haute, IN	.9415
Clay, IN	
Vigo, IN	
Texarkana-TX-Texarkana, AR	.8974
Miller, AR	
Bowie, TX	
Toledo, OH	1.0049
Fulton, OH	
Lucas, OH	
Wood, OH	
Topeka, KS	.9664
Shawnee, KS	
Trenton, NJ	1.0027
Mercer, NJ	
Tucson, AZ	.9818
Pima, AZ	
Tulsa, OK	.9233
Creeks, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
Tuscaloosa, AL	.9297
Tuscaloosa, AL	
Tyler, TX	.9637
Smith, TX	
Utica-Rome, NY	.9197
Herkimer, NY	
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.1378
Napa, CA	
Solano, CA	
Vancouver, WA	1.0370
Clark, WA	
Victoria, TX	.9531
Victoria, TX	
Vineland-Millville-Bridgeton, NJ	.9897
Cumberland, NJ	
Visalia-Tulare-Porterville, CA	1.0188
Tulare, CA	
Waco, TX	.8933
McLennan, TX	
Washington, DC-MD-VA [1]	1.0600

TABLE 2a—GEOGRAPHIC ADJUSTMENT FACTORS WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Geographic adjustment factor
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Fairfax VA	
Fairfax City, VA	
Falls Church City, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Stafford, VA	
Waterloo-Cedar Falls, IA	.9358
Black Hawk, IA	
Bremer, IA	
Wausau, WI	.9892
Marathon, WI	
West Palm Beach-Boca Raton-Delray Beach, FL	1.0071
Palm Beach, FL	
Wheeling, WV–OH	.8943
Belmont, OH	
Marshall, WV	
Ohio, WV	
Wichita, KS	.9921
Butler, KS	
Harvey, KS	
Sedgwick, KS	
Wichita Falls, TX	.9119
Wichita, TX	
Williamsport, PA	.9464
Lycoming, PA	
Wilmington, DE–NJ–MD	1.0401
New Castle, DE	
Cecil, Md	
Salem, NJ	
Wilmington, NC	.9392
New Hanover, NC	
Worcester-Fitchburgh-Leominster, MA	1.0377
Worcestor, MA	
Yakima, WA	1.0060
Yakima, WA	
York, PA	.9545
Adams, PA	
York, PA	
Youngstown-Warren, Oh	.9947
Mahoning, OH	
Trumbull, OH	
Yuba City, CA	1.0086
Sutter, CA	
Yuba, CA	
Yuma, AZ	.9478
Yuma, AZ	

[1] Areas that qualify as large urban areas.

TABLE 2b.—GEOGRAPHIC ADJUSTMENT FACTORS FOR RURAL AREAS

Nonurban area	Geographic adjustment factor
Alabama	0.8537
Alaska	1.1466
Arizona	0.9335
Arkansas	0.8472
California	1.0064
Colorado	0.9240
Connecticut	1.0848

TABLE 2b.—GEOGRAPHIC ADJUSTMENT FACTORS FOR RURAL AREAS—Continued

Nonurban area	Geographic adjustment factor
Delaware	0.9323
Florida	0.9402
Georgia	0.8887
Hawaii	0.9831
Idaho	0.9511
Illinois	0.8878
Indiana	0.8898
Iowa	0.8769
Kansas	0.8739
Kentucky	0.8922
Louisiana	0.8703
Maine	0.9199
Maryland	0.9062
Massachusetts	1.0741
Michigan	0.9444
Minnesota	0.9189
Mississippi	0.8384
Missouri	0.8609
Montana	0.9162
Nebraska	0.8489
Nevada	0.9870
New Hampshire	0.9797
New Jersey [1]	
New Mexico	0.9183
New York	0.9252
North Carolina	0.8962
North Dakota	0.8882
Ohio	0.9243
Oklahoma	0.8712
Oregon	0.9801
Pennsylvania	0.9356
Puerto Rico	0.6806
Rhode Island [1]	
South Carolina	0.8825
South Dakota	0.8584
Tennessee	0.8678
Texas	0.8798
Utah	0.9526
Vermont	0.9552
Virginia	0.8928
Washington	0.9839
West Virginia	0.9289
Wisconsin	0.9248
Wyoming	0.9265

[1] All counties within the State are classified urban.

TABLE 2c.—GEOGRAPHIC ADJUSTMENT FACTOR FOR RURAL COUNTIES WHOSE HOSPITALS ARE DEEMED URBAN

County	Urban area	Geographic adjustment factor
Macoupin Co., IL	St. Louis, MO–IL	0.9878
Mason Co., IL	Peoria, IL	0.9391
Clinton, IN	Lafayette, IN	0.9252
Jefferson Co., KS.	Topeka, KS	0.9664
Allegan Co., MI.	Grand Rapids, MI	0.9955
Barry Co., MI	Battle Creek, MI	0.9759
Cherokee Co., SC.	Greenville-Spartanburg, SC.	0.9487
Shiawassee Co., MI.	Flint, MI	1.0694
Clinton Co., MO.	Kansas City, MO–KS.	0.9974
Bedford Co., VA.	Roanoke, VA	0.9177
Fredericksburg City, VA.	Washington, DC–MD–VA.	1.6000

TABLE 2c.—GEOGRAPHIC ADJUSTMENT FACTOR FOR RURAL COUNTIES WHOSE HOSPITALS ARE DEEMED URBAN—Continued

County	Urban area	Geographic adjustment factor
Jefferson Co., WI.	Milwaukee, WI	1.0036
Jefferson Co., WV.	Washington, DC–MD–VA.	1.6000
Walworth Co., WI.	Milwaukee, WI	1.0036
Limestone Co., AL.	Huntsville, AL	0.9247
Charlotte Co., FL.	Sarasota, FL	0.9764
Indian River Co., FL.	Fort Pierce, FL	1.0152
Henry Co., IN	Anderson, IN	0.9737
Lenawee Co., MI.	Ann Arbor, MI	1.0554
Marshall Co., AL.	Huntsville, AL	0.9247
Christian Co., IL.	Springfield, IL	0.9628
Cass Co., MI	Benton Harbor, MI	0.9444
Ionia Co., MI	Lansing-East Lansing, MI.	1.0060
Tuscola Co., MI.	Saginaw-Bay City-Midland, MI.	1.0017
Van Buren Co., MI.	Kalamazoo, MI	1.0656
Genesee Co., NY.	Rochester, NY	0.9816
Harnett Co., NC.	Fayetteville, NC	0.9057
Columbiana Co., OH.	Beaver Country, PA	0.9568
Morrow Co., OH.	Mansfield, OH	0.9243
Van Wert Co., OH.	Lima, OH	0.9243
Lawrence Co., PA.	Beaver County, PA	0.9568

Appendix A: Description of the Capital Acquisition Model and Budget Neutrality Adjustment

Section 1886(g)(1) of the Act (as amended by section 4001 of Pub. L. 101–508) requires that for FY 1992 through FY 1995 aggregate prospective payments for operating costs under section 1886(d) and prospective payments for capital costs under section 1886(g)(1) be reduced each year in a manner that results in savings equal to 10 percent of the amount that would have been payable on a reasonable cost basis for capital-related costs in that year. We have decided to generate the 10 percent capital savings entirely from the capital prospective payment system so that for purposes of budget neutrality the capital payments for FY 1992 through FY 1995 would approximately equal 90 percent of Medicare inpatient capital costs.

To calculate budget neutrality, the hold harmless provision of this proposed regulation requires that we identify old and new capital; that is, we must be able to project the rate at which old capital will be depreciated and written off and at which new capital will be acquired and depreciated. (Old capital costs are depreciation and

interest expenses for depreciable assets that are first reported on the hospital's Medicare cost report for the hospital's cost reporting period ending on or before September 30, 1990.)

The capital amounts reported on the Medicare cost report as well as the amounts reported through other systems such as the American Hospital Association panel survey are composed of depreciation and interest amounts for assets acquired over many different years, and also include capital-related costs such as insurance, leases, and taxes. We had no source of data available to disaggregate the composite capital amounts into old and new capital. If we had capital asset acquisitions by year, and by hospital, we could develop depreciation schedules to allocate capital amounts over the useful lives of the assets. Given a sequence of depreciation expenses over time, it is possible to estimate a reasonable sequence of capital acquisitions that reproduce the sequence of depreciation expenses. Because of inflation in capital, capital acquisitions in recent years have more weight in current depreciation expenses than capital assets acquired long ago. Consequently, capital expenses that are generated using an actuarial capital acquisition model are not overly sensitive to the assumptions used to estimate capital acquisitions for the distant past since the very old capital is so much smaller than recent capital and has little effect on depreciation.

We needed to model a series of capital asset acquisitions to develop depreciation schedules and to separate capital amounts into "new" and "old" capital. We needed the following outputs from the model to estimate payments under the proposed regulation, and to set budget neutrality:

"Old" capital depreciation and interest
"New" capital depreciation and interest
Other capital expenses (leases, taxes, insurance)
"Medicare" share of above capital expenses
Occupancy rate
Payment parameters (such as case-mix, and disporportionate share adjustment.)

The basic variables generated by the model are bed size and capital acquisitions. Since we needed to develop depreciation expenses, we needed to develop a pattern of capital acquisitions in the past. We chose a 25 year average useful life for fixed assets and a 7 average year useful life for movable assets. The chosen useful lives are a reasonable average based on the expected useful lives of the assets involved in the fixed and movable categories. We needed to match the generated depreciation expenses to the expenses reported by the AHA panel survey. The more years for which depreciation expenses can be matched, the better the modeled capital acquisition sequence will be. We decided to match depreciation expenses back to 1980, and all later years. To compute depreciation for fixed assets in 1980, we needed capital acquisitions 25 years before 1980. Thus, the first depreciation amount that can be completely calculated and matched to the AHA panel survey data is in 1980.

Capital asset acquisition costs going back into the 1950's are not available. We needed a way to develop acquisition costs using patterns found in the Medicare cost reports. Using data from cost reports for the first five years of the prospective payment system, we examined the growth in gross assets to find any patterns. We found that most hospitals had very low rates of growth, while a few hospitals had high rates of growth. We also found that the rate of growth in one year is generally independent of the rate of growth in the prior year. The one year rate of growth distribution fit the gamma distribution very closely both for fixed and movable capital. The gamma distribution fit the movable asset increases if hospitals without movable asset increases were removed from the fit. Consequently, the growth in movable assets had to be handled in two pieces. We assumed twelve percent of hospitals would have no increase in movable assets in a year, while the remaining 88 percent of hospitals would have movable increases assigned from the gamma distribution. We then randomly generated numbers from the gamma distribution and multiplied them to generate 2 year, 3 year, and 4 year rates of increase in capital costs. We compared these rates of increases to the corresponding increases in the cost report data. The increase distributions matched closely as shown in figure 1 for fixed assets, and in figure 2 for movable assets. Since the gamma distribution described the growth in capital so well, we used the gamma distribution as the foundation of the capital model.

Since many people claim the existence of a capital cycle, we looked for a capital cycle in the Medicare hospital cost report data. We found no regular, recurring capital cycle in the data, but we found that randomly generated numbers from the gamma distribution would produce capital cycles, but in an irregular pattern. The irregular patterns better describe actual capital growth patterns because of differences among hospitals, and because of differences in capital acquisitions over time. Figure 3 shows an example of how numbers generated from the gamma distribution produce a cycle effect.

We have found through regression analysis that other factors such as the number of physicians per capita, the percent of physicians that are specialists, the county per capita income, the percent of population with health insurance, and the number of hospitals in the county have a major effect on hospital capital costs. These findings imply that a hospital's position in the "capital cycle" doesn't explain all of the capital variation, and that major differences in capital costs among hospitals persist over time.

Since capital levels vary with bed size, especially between large (100 or more beds) and small (less than 100 beds) hospitals, the model needed to adjust for bed size. Further, bed size changes imply changes in capital acquisitions. Even though hospital bed size is available from the hospital cost report, we needed bed sizes, and changes in bed size going back to the 1950's. We found that bed size frequently changed by small amounts for many hospitals. We determined that these small changes and their effect on capital were immaterial, and that only significant bed size changes should result in changes in capital. For these reasons, we decided to randomly model bed size for hospitals. The initial bed size was developed from the cost report data and it also very closely fit a gamma distribution. Since the average bed size has not changed significantly, and because of low average occupancy, we do not expect average bed size to change. For this reason, the model had to balance bed size increases with bed size decreases. In modeling bed size changes, two conditions had to be met. First, the changes had to be significant. We chose a minimum change of plus or minus 15% for large hospitals, and plus or minus 10% for small hospitals. We used a normal distribution which was split and separated to assign the rate of bed size change. (See figure 4.) This was done by randomly generating a number from the normal distribution and, if it was positive, by adding .15 (.10 for small hospitals), or, if it was negative, by subtracting .15 (.10 for small hospitals) to assign the rate of change in bed size. Second, bed size changes must be relatively infrequent. We expect that most hospitals should not have more than two significant bed size changes in 35 years. A two per cent probability of bed size change in any one year satisfies this condition.

The basic projection unit of the model is capital asset acquisitions per bed. The hospital bed is the fundamental unit of capacity in the hospital. Other measurement units of capital such as capital per hospital, or capital per admission are less appropriate because these amounts are dependent on bed size or occupancy rates. For a hospital assumed to increase bed size, we attributed capital to the new beds at the same level as the old beds (no change in capital per bed). For a hospital assumed to decrease bed size, we adjusted the capital per bed to ensure that the aggregate capital for the hospital did not change. We did this because the hospital had already acquired capital assets that had to be depreciated.

At this point we can describe how the model develops depreciation costs per bed and how these depreciation costs are calibrated. Bed sizes are first developed. We found from the hospital cost reports that the distribution of bed size among hospitals fits the gamma distribution. We initially has to have bed size numbers for 1955. We generated these numbers from the gamma distribution. We did this for 6,000 hospitals. We assigned changes in bed size for all subsequent years using the procedure described above. We compared the average bed size for 1988 with the average bed size in the PPS 5 cost reports. If the bed size numbers did not match, we multiplied all the bed sizes by the ratio of the two averages so that the correct average bed size was generated. Next, we generated gross capital assets in 1955 separately for fixed and movable capital. We found that the distribution of asset amounts also fit a gamma distribution for both fixed and movable capital. For all subsequent years, we computed increases in capital assets from random gamma distributions as described above. Once the capital increases are computed, we have the new acquisitions for each year. Using the capital acquisitions, we computed straight line depreciation for each year starting with 1980 (25 years for fixed,

and 7 years for movable). We compared the modeled 1980 depreciation with the 1980 depreciation reported in the AHA panel survey. We used a fixed-movable split developed from the Medicare hospital cost reports. If the numbers differed, we multiplied all generated capital acquisition amounts by the ratio of the AHA depreciation to the generated depreciation. At this point the model is calibrated to 1980. For 1981, the capital acquisition amounts for 1981 were adjusted so that when 1981 depreciation is computed, it matches the AHA panel survey depreciation. All subsequent years were adjusted in the same way. At this point, the model has been calibrated for depreciation.

Interest amounts were computed by initially assuming that all new acquisitions would be financed 100 per cent by the amortization method. Doing this, we found that the interest was about double the interest report in the AHA panel survey. Since all hospitals do not finance 100 percent of capital, we adjusted the interest by assuming that 50 percent of capital is financed industry-wide, and that some hospitals finance all capital, some none of their capital, and some part of their capital. A number from the uniform distribution between zero and one was randomly assigned to each hospital to indicate the portion of capital that is financed.

At this point we developed total capital costs per bed. Since Medicare doe not identify other capital costs such as rent, leases, insurance, and taxes, we had to assign these amounts. We analyzed the capital expenses reported on the Medicare cost reports and found that the other capital cost categories represent about 20 per cent of capital. We reduced depreciation and interest for each hospital by 20 per cent and assigned the residual to the other capital category.

Since we reimburse for capital associated with a Medicare admission, we needed to convert the capital per bed costs to capital per Medicare admission costs. The average capital cost per admission that is developed must match actual Medicare average cost per admission (before legislated reductions). Dividing Medicare capital cost per admission by the developed average capital cost per bed gives the correct conversion factor which automatically takes several factors into consideration such as average occupancy rate, length of stay, and cost allocation rules. The average occupancy rate is 60 per cent, but varies among hospitals. The conversion factor has the 60 per cent occupancy rate built in, but the occupancy rate varies among hospitals which directly affects capital per admission. We looked at distributions of occupancy rates, separately for large and small hospitals, and we were able to satisfactorily fit them to triangular distributions. In the triangular distribution, the probability density is zero at a minimum occupancy rate, and uniformly rises to a maximum density at an intermediate occupancy rate and then uniformly falls to zero density at a maximum occupancy rate. Even though the actual curve for occupancy rates is rounded, it fit the triangular distribution fairly well and facilitated the generation of random numbers. Each hospital was randomly assigned an occupancy rate which was divided into 0.60 and then multiplied by the capital cost per admission to get the final capital per admission cost.

At this point, the model has completely estimated capital cost per admission for each hospital. To be useful, the estimates must meet the following conditions. First, the model's estimation of aggregate capital expenditures must reproduce capital expenditures that occurred historically. Second, the model must reproduce the interest-depreciation split that occurred historically, and the fixed-movable split that occurred historically. Third, the model should reflect differences between large and small hospitals in capital expenditures. Fourth, the model must allocate capital between old and new capital cost categories consistent with the definition in this proposed rule. All of these requirements have been met specifically by the design of the model. The last requirement is that the model must reproduce the actual distribution of Medicare capital costs per hospitals. We compared the estimated Medicare costs per admission distribution for fiscal year 1988 with the distribution in the 1988 cost reports. The distributions were almost identical. It is remarkable that this was achieved by running the model with all its random simulations for all the years 1955 through 1988 and with all the other adjustments described above. The comparison of the distributions is shown in figure 5.

To determine budget neutrality, we must model payments under the cost reimbursement system, as well as payments under the proposed prospective payment system. The model has already determined capital costs, so payments under the cost reimbursement system are readily available. The model does not have the characteristics that are factors in the proposed payment system. In fact, the model does not specifically identify any hospital. Consequently, in order to model payments under this proposed rule, the payment parameters (case mix, geographic adjustment, outlier adjustment, disproportionate share adjustment, and special exceptions treatment for qualifying disproportionate share hospitals and sole community hospitals) must be assigned to the generated hospitals. Urban-rural status also must be assigned since it affects some of the payment parameters. All of the following distributions and regressions were performed on the cost report data, or the capital impact files. Statistical distributions were chosen that best approximated the shape of the distributions, and the parameters were chosen to give the best fit. A regression equation was used to examine the distribution of case mix levels relative to the available hospital characteristics generated by the model, that is, bed size, occupancy rate, capital cost level, and year. The deviation from the mean case mix was computed from the regression results and added to the projected mean case mix. The mean case mix is projected to increase by two percent per year. Any effects of case-mix change are already included in the capital cost per admission projections. Since we are modeling payments that must be budget neutral to costs, all case mix changes must be considered in the budget neutrality calculation, regardless of the reason. We have monitored case mix changes since the beginning of PPS. Total case mix levels have increased about two per cent every year after correcting for the distortion in 1988 and the DRG relative weight adjustment in 1990. We project that case mix will continue to increase at the rate of two per cent per year.

Urban-rural status is randomly assigned with the assignment varying with large or small hospital status. The geographic adjustment is assigned from a triangular distribution. The disproportionate share adjustment is generated from a gamma distribution for large hospitals in urban areas. We randomly determine by urban-rural status and large-small status if a hospital has outliers. If a hospital is assigned outliers, the level of outliers is generated from a gamma distribution. We randomly assign the special exceptions status for urban disproportionate share hospitals (with more than 100 beds), and for rural sole community hospitals.

Budget neutrality is computed by comparing modeled prospective payments with 90 percent of modeled cost. We propose that if the legislatively required budget neutrality factor is greater than 1.0, it will be applied to the Federal and hospital-specific rates, but not to the hold harmless payments. If the budget neutrality factor is less than 1.0, it is applied to the hold harmless amounts as well as the Federal and hospital-specific rates. We propose that exceptions will be financed from the prospective payments. Consequently, we need to compute a second factor to apply to the hospital-specific and Federal payments. This factor should ensure that aggregate prospective payments including exceptions payments would be the same as aggregate prospective payments in the absence of an exceptions process. Since changes in the level of the payment rates changes the level of exceptions, the budget neutrality and exceptions adjustment factors must be determined by repeated trials. Further, these two factors interact with each other so that they must be determined simultaneously. We successfully determined values for these factors so that the exceptions adjustments are correct and estimated payments under the capital prospective payment system equal 90 per cent of estimated Medicare inpatient capital costs.

BILLING CODE 4120-01-M

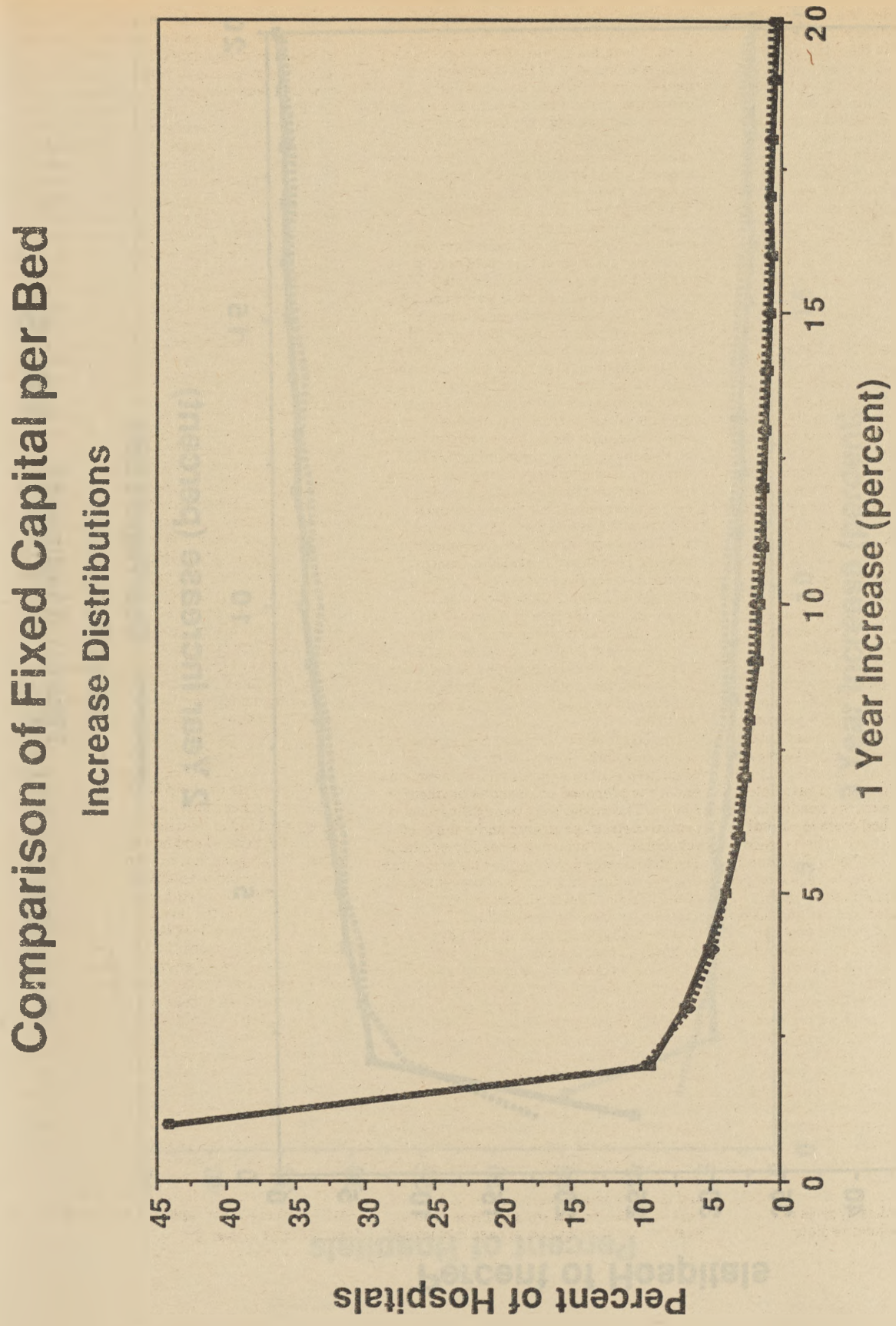
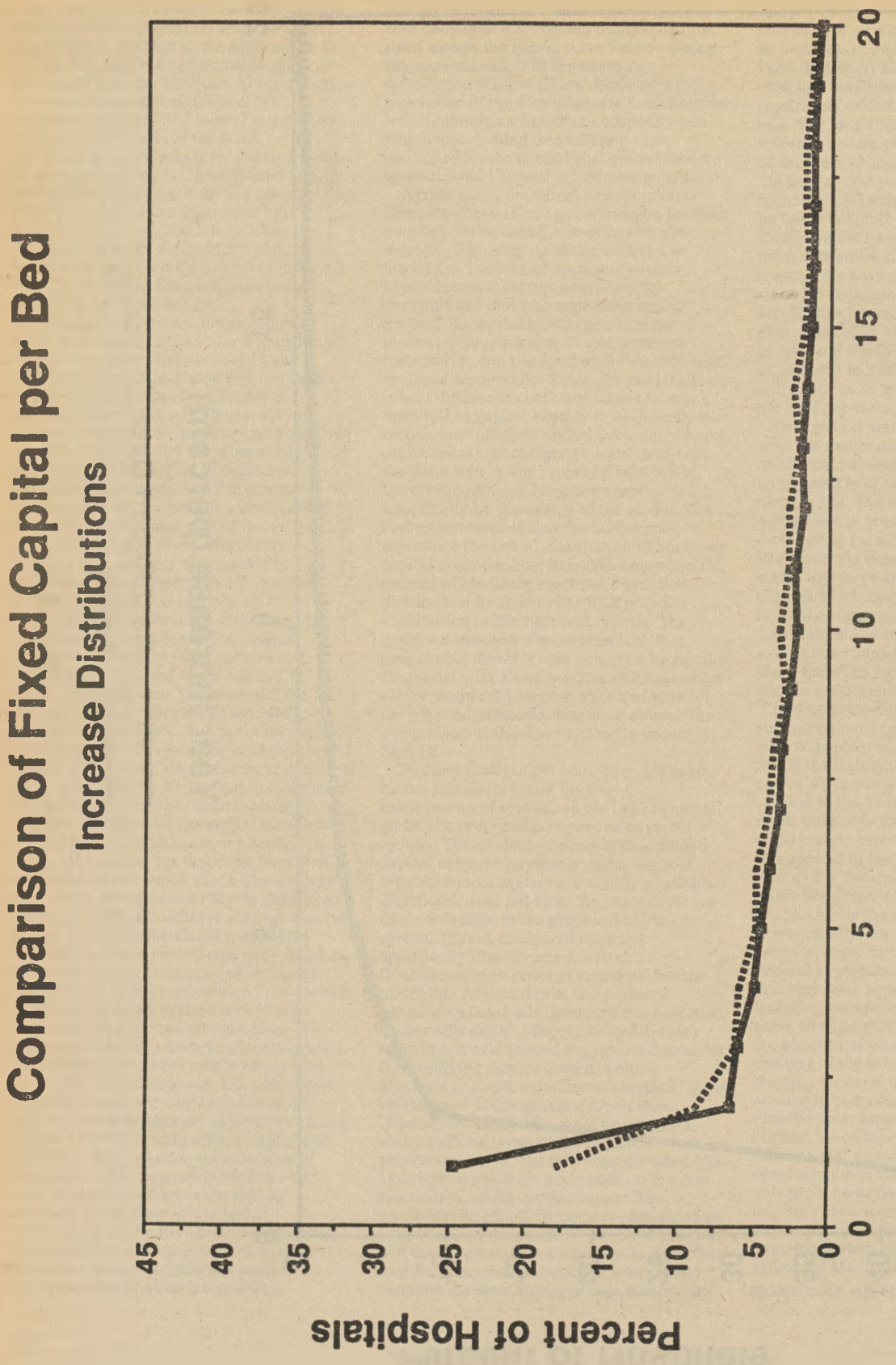

Comparison of Fixed Capital per Bed
Increase Distributions
Percent of Hospitals
45
40
35
30
25
20
15
10
5
0
0
5
10
15
20
1 Year Increase (percent)
Cost Report Data
Model

Figure 1



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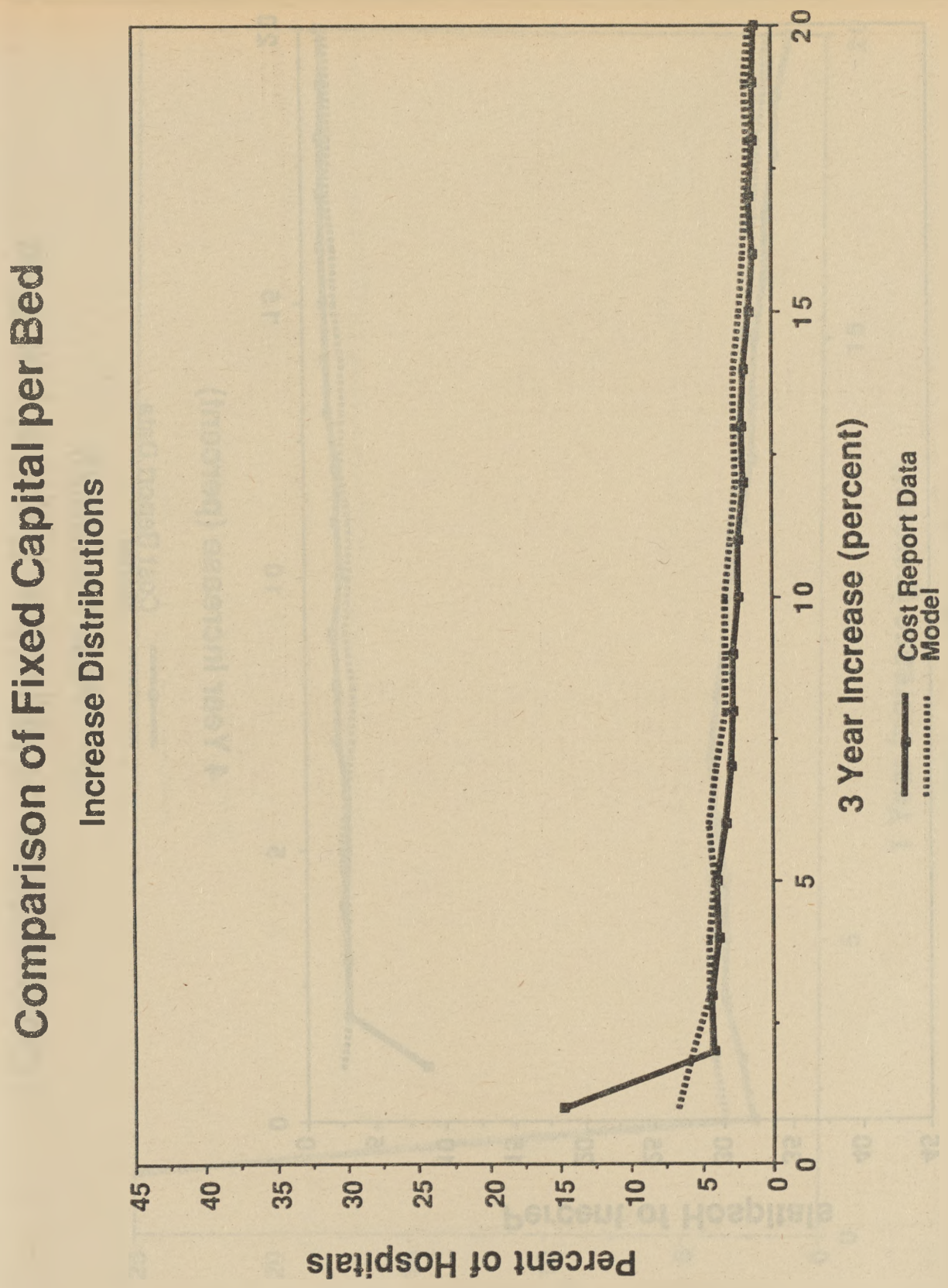

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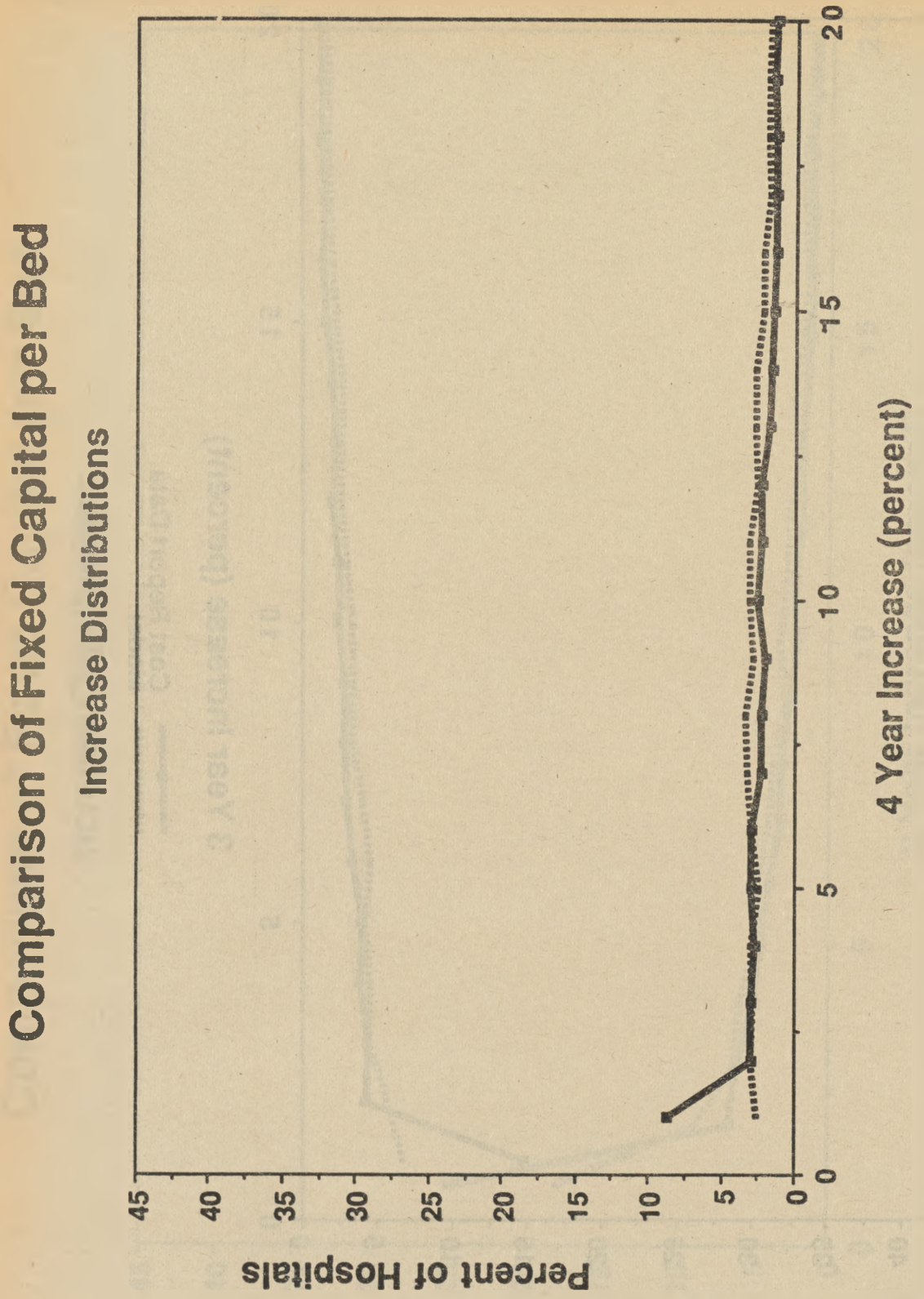

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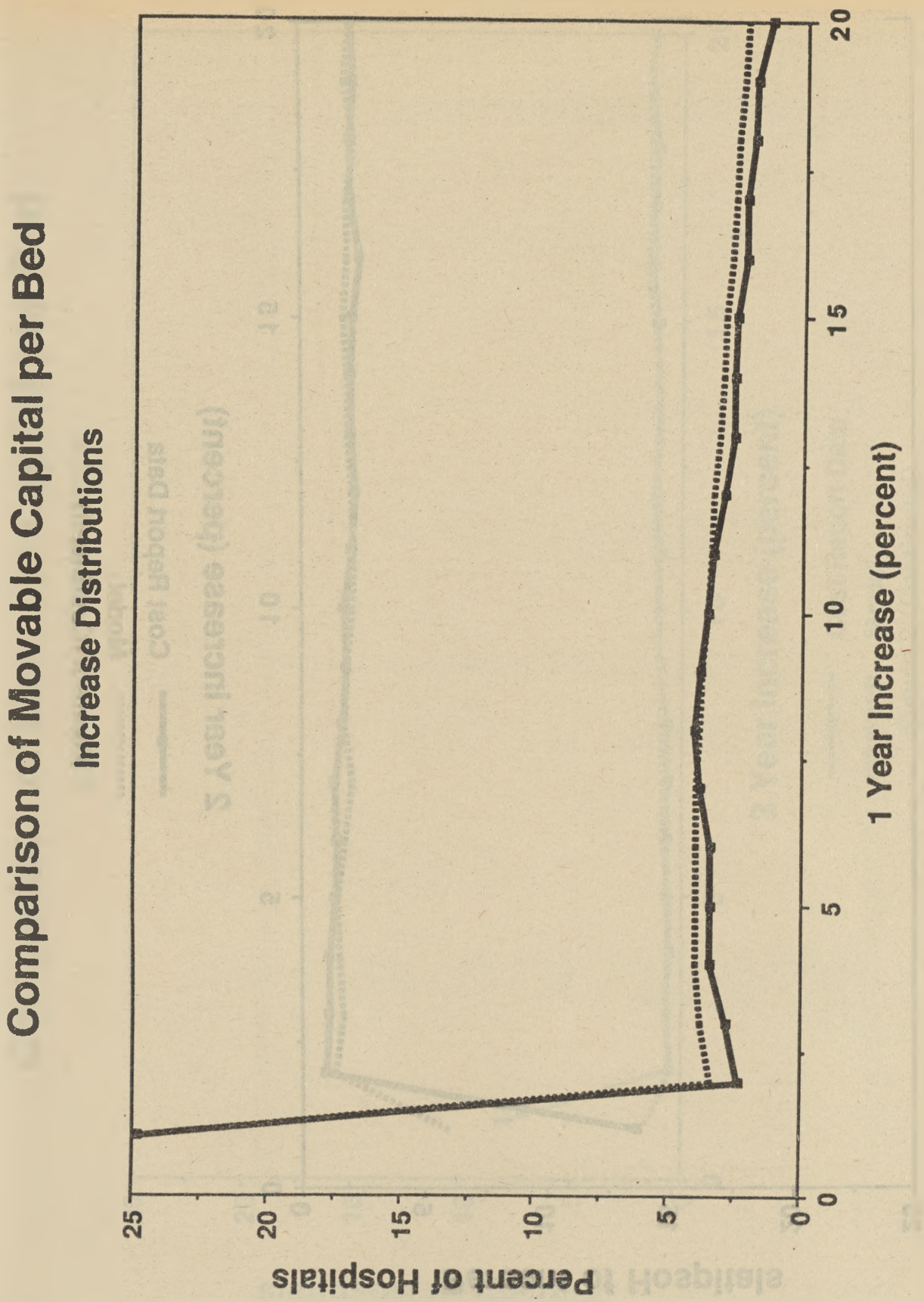
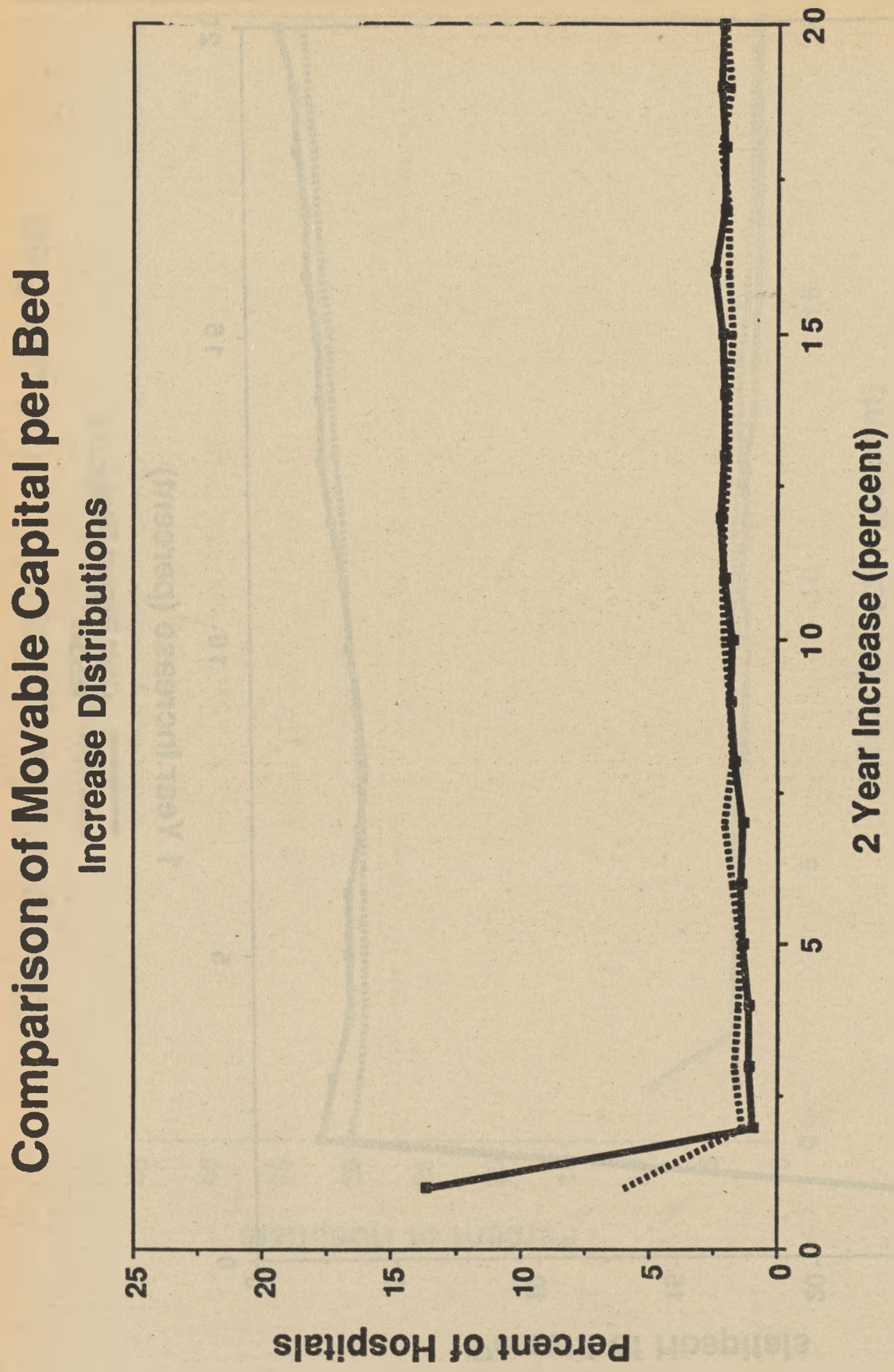

Comparison of Movable Capital per Bed
Increase Distributions
Percent of Hospitals
25
20
15
10
5
0
0
5
10
15
20
1 Year Increase (percent)
Cost Report Data
Model

Figure 2



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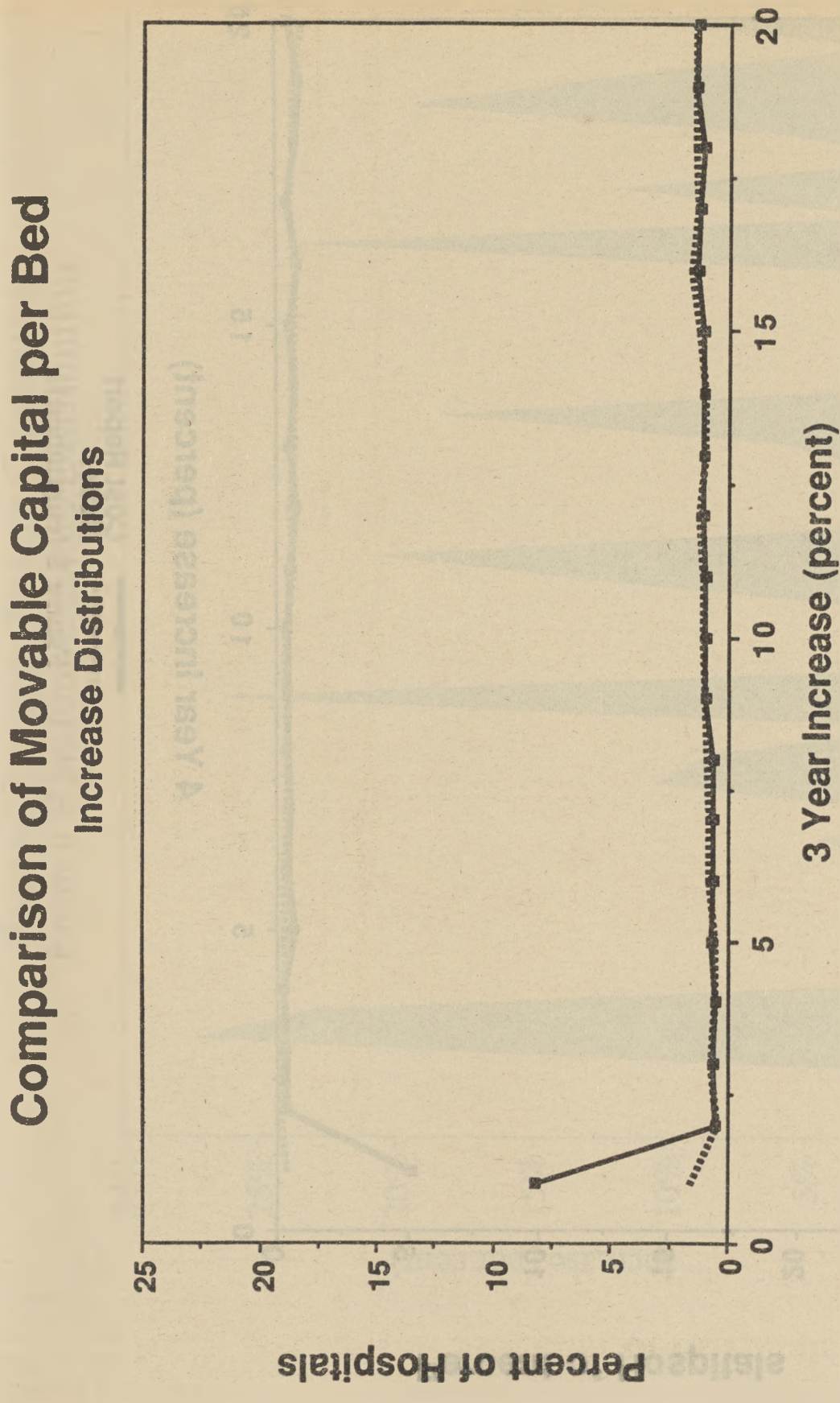

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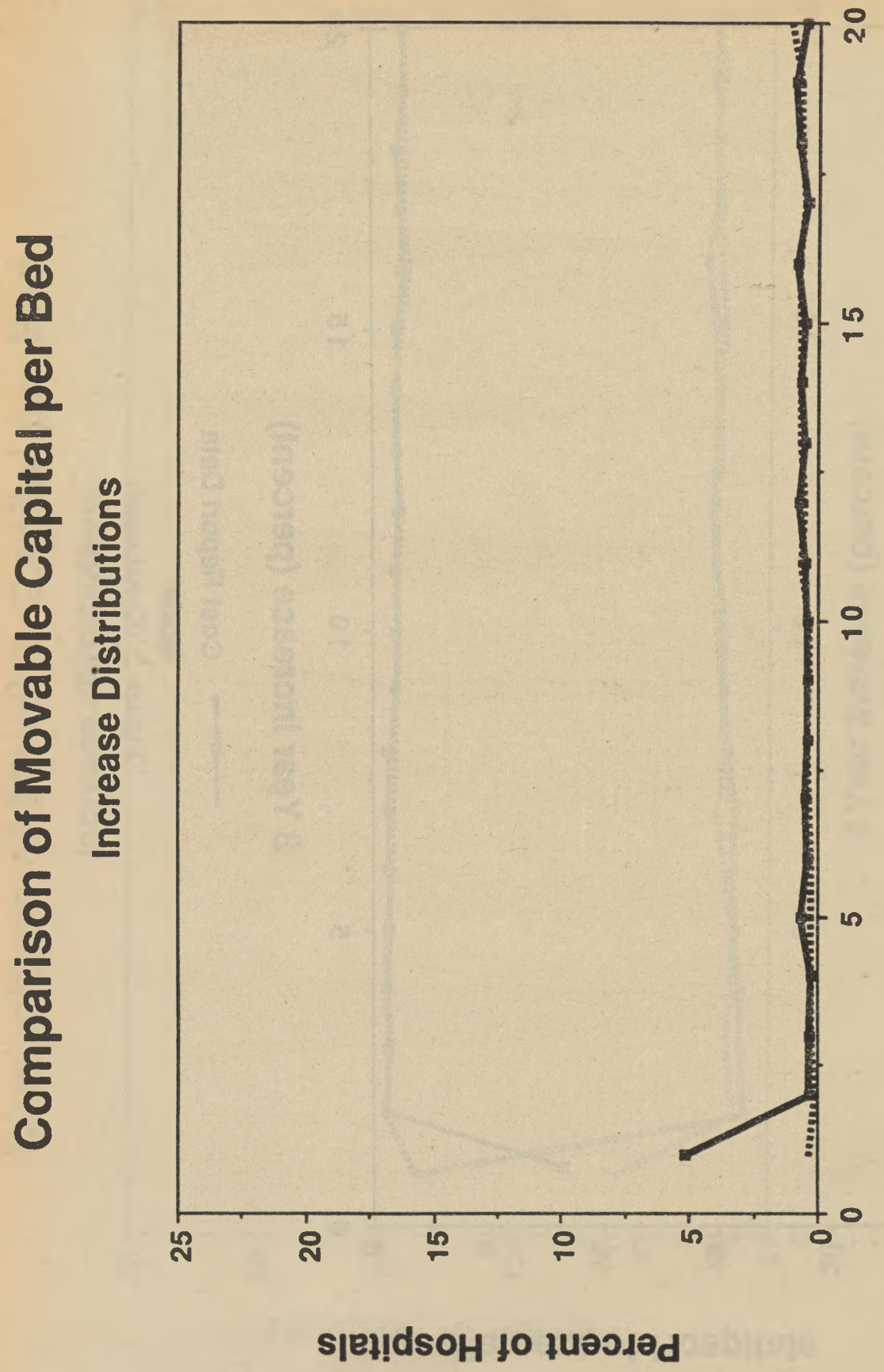

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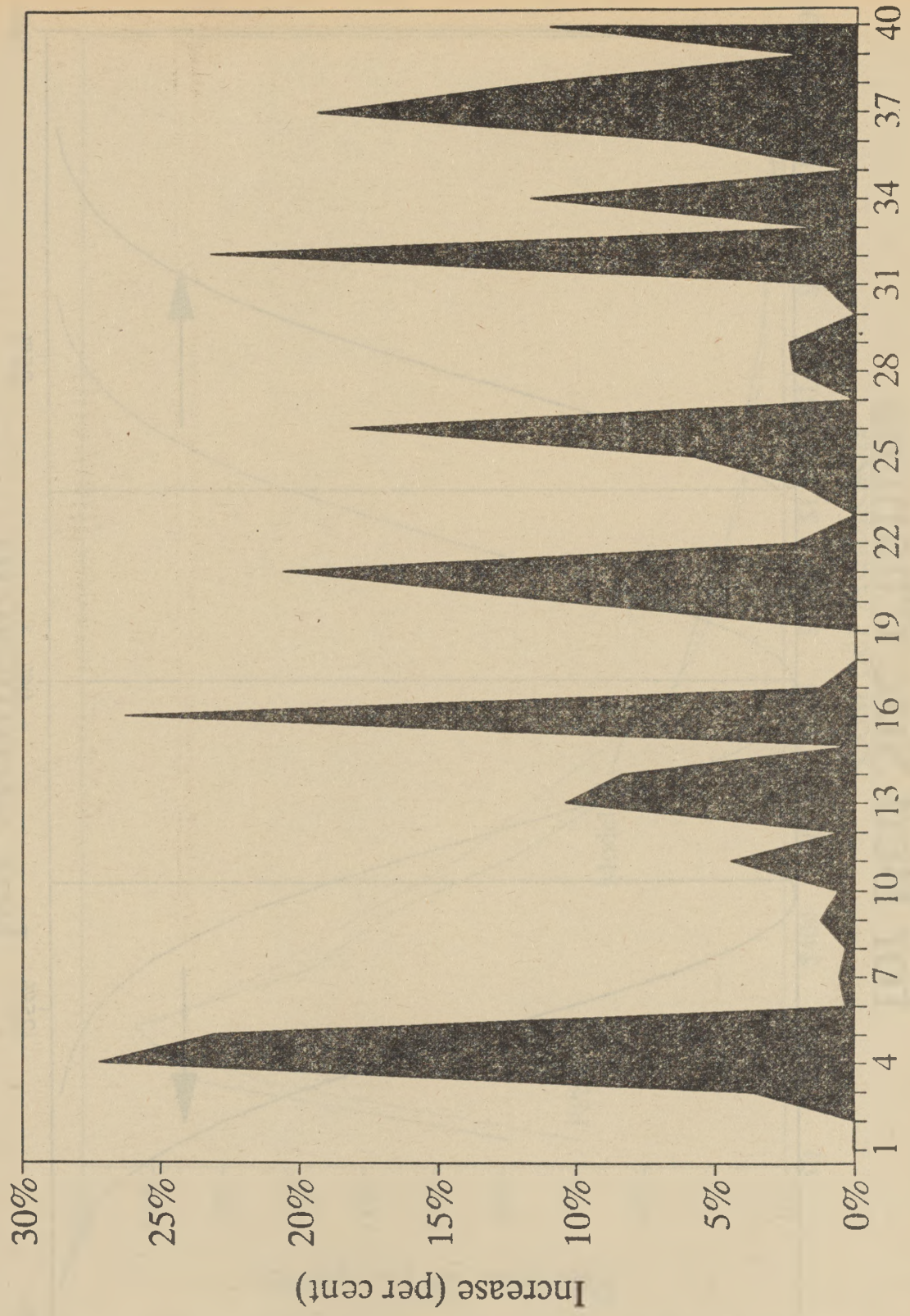
Rate of Increase Pattern Generated
From a Random Gamma Distribution
Increase (per cent)
30%
25%
20%
15%
10%
5%
0%
1
4
7
10
13
16
19
22
25
28
31
34
37
40
Year

Figure 3

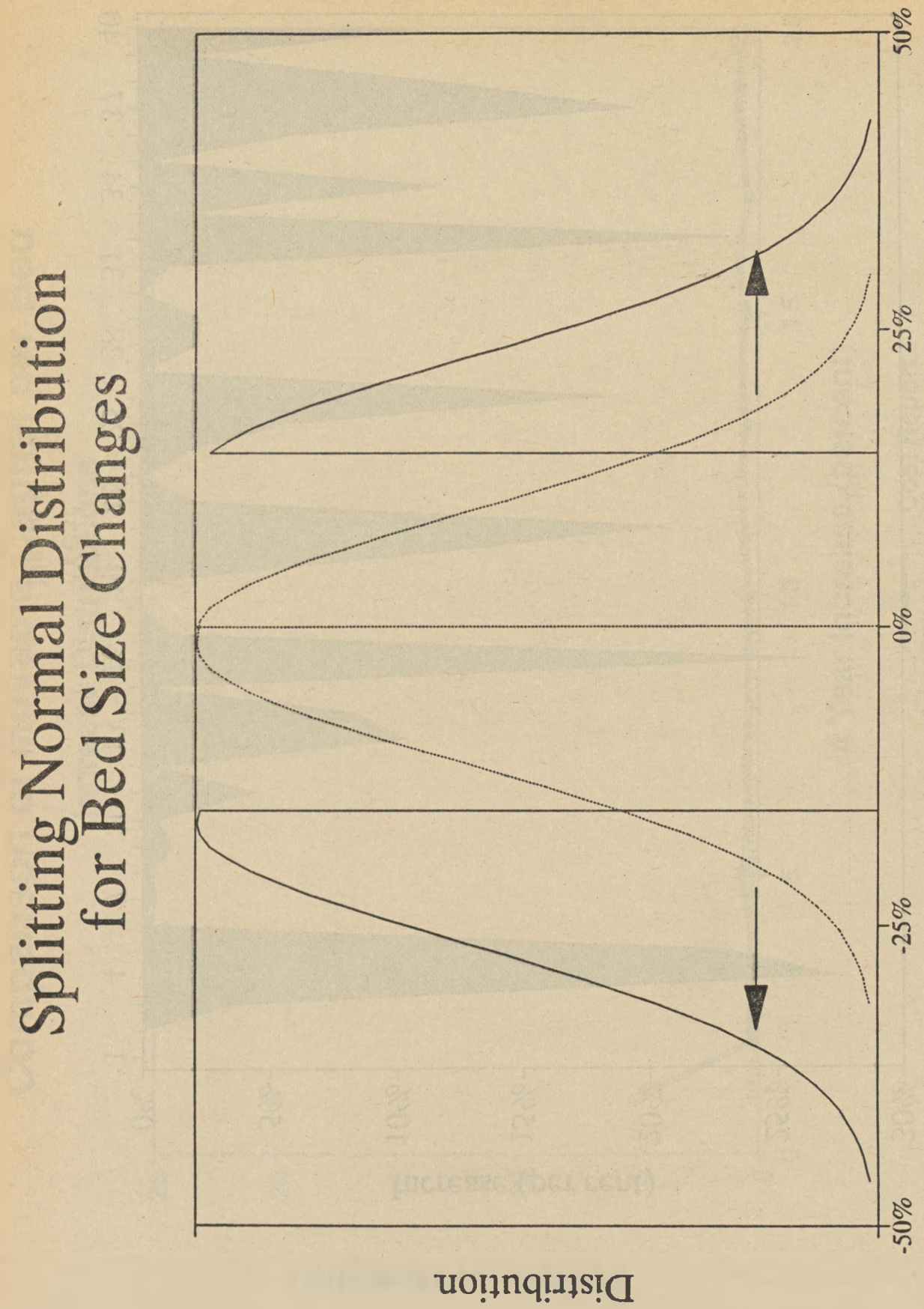
Splitting Normal Distribution
for Bed Size Changes
Distribution
-50%
-25%
0%
25%
50%
Per Cent Change in Bed Size

Figure 4

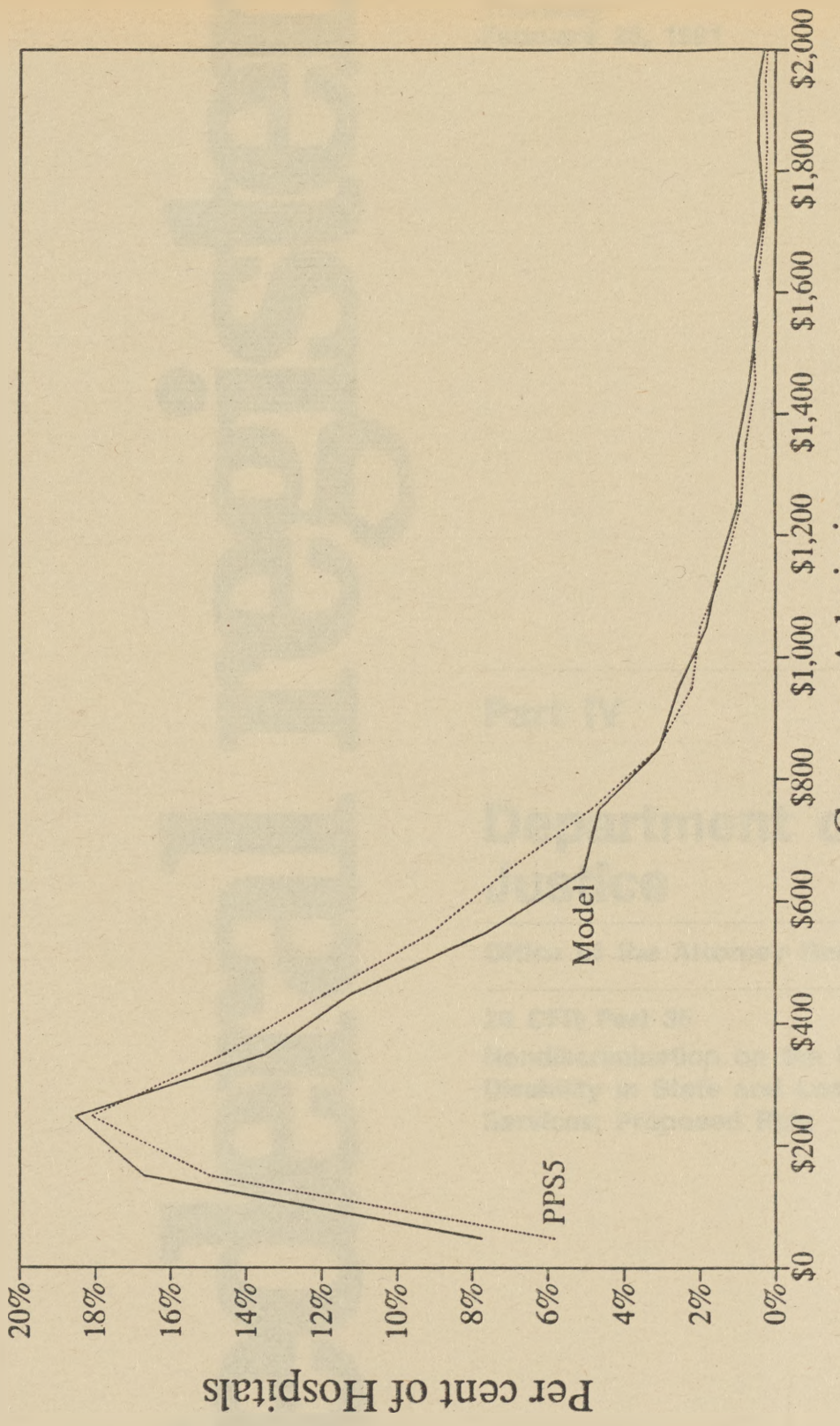

Figure 5

[FR Doc. 91-4474 Filed 2-22-91; 8:45 am]
BILLING CODE 4120-01-C

federal register

Thursday
February 28, 1991

Part IV

Department of Justice

Office of the Attorney General

28 CFR Part 35

Nondiscrimination on the Basis of Disability in State and Local Government Services; Proposed Rule

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 35

[Order No. 1474-91]

Nondiscrimination on the Basis of Disability in State and Local Government Services

AGENCY: Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule implements subtitle A of title II of the Americans with Disabilities Act, Public Law 101-336, which prohibits discrimination on the basis of disability by public entities. Subtitle A extends the prohibition of discrimination in federally assisted programs established by section 504 of the Rehabilitation Act of 1973 to all activities of State and local governments, including those that do not receive Federal financial assistance. This proposed rule, therefore, adopts the general prohibitions of discrimination established under section 504, as well as the requirements for making programs accessible to individuals with disabilities and for providing equally effective communications. It also sets forth standards for what constitutes discrimination on the basis of mental or physical disability, provides a definition of disability and qualified individual with a disability, and establishes a complaint mechanism for resolving allegations of discrimination.

DATES: To be assured of consideration, comments must be in writing and must be received on or before April 29, 1991. Whenever possible, comments should refer to specific sections in the proposed regulation. Comments that are received after the closing date will be considered to the extent practicable.

ADDRESSES: Comments should be sent to: John L. Wodatch, Office on the Americans with Disabilities Act, Civil Rights Division, U.S. Department of Justice, Rulemaking Docket 003, P.O. Box 75087, Washington, DC 20013.

Comments received will be available for public inspection in Room 854 of the HOLC Building, 320 First Street, NW., Washington, DC, from 9 a.m. to 5 p.m., Monday through Friday, except legal holidays, from March 14, 1991, until the Department publishes this rule in final form. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers.

Copies of this notice of proposed rulemaking are available in the following alternate formats: large print, Braille, electronic file on computer disk, and audio-tape. Copies may be obtained from the Office on the Americans with Disabilities Act at (202) 514-0301 (Voice) or (202) 514-0381 (TDD). The notice of proposed rulemaking is also available on electronic bulletin board at (202) 514-6193.

FOR FURTHER INFORMATION CONTACT: John Wodatch, Office on the Americans with Disabilities Act, or Stewart B. Oneglia, Chief, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, Washington, DC 20530. These individuals may be contacted through the Division's ADA Information Line at (202) 514-0301 (Voice), (202) 514-0381 (TDD), or (202) 514-0383 (TDD). These telephone numbers are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The landmark Americans with Disabilities Act ("ADA" or "the Act"), enacted on July 26, 1990, provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications.

The Department of Justice has published separately its proposed regulation for implementation of title III of the ADA, which applies to public accommodations and commercial facilities. (56 FR 7452, February 22, 1991.)

This proposed regulation implements title II of the ADA, which applies to State and local governments. Most programs and activities of State and local governments are recipients of Federal financial assistance from one or more Federal funding agencies and, therefore, are already covered by section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) ("section 504"), which prohibits discrimination on the basis of handicap in federally assisted programs and activities. Because title II of the ADA is, in essence, an extension of the nondiscrimination mandate of section 504 to those State and local governments that do not receive Federal financial assistance, this proposed rule hews as closely as possible to the provisions of existing section 504 regulations. This approach is also based on section 204 of the ADA, which provides that the regulations issued by the Attorney General to implement title II shall be consistent with the ADA and with the Department of Health, Education, and Welfare's coordination regulation, now codified at 28 CFR part 41, and, with respect to program accessibility and communications, with the Department of Justice's regulation for its federally conducted programs and activities, codified at 28 CFR part 39.

The first regulation implementing section 504 was issued in 1977 by the Department of Health, Education, and Welfare (HEW) for the programs and activities to which it provided Federal financial assistance. The following year, pursuant to Executive Order 11914, HEW issued its coordination regulation for federally assisted programs, which served as the model for regulations issued by the other Federal agencies that administer grant programs. HEW's coordination authority, and the coordination regulation issued under that authority, were transferred to the Department of Justice by Executive Order 12250 in 1980.

In 1978, Congress extended application of section 504 to programs and activities conducted by Federal Executive agencies and the United States Postal Service. Pursuant to Executive Order 12250, the Department of Justice developed a prototype regulation to implement the 1978 amendment for federally conducted programs and activities. More than 80 Federal agencies have now issued final regulations based on that prototype, prohibiting discrimination based on handicap in the programs and activities they conduct.

Despite the large number of regulations implementing section 504 for federally assisted and federally conducted programs and activities, there is very little variation in their substantive requirements, or even in their language. Major portions of this proposed regulation, therefore, are taken directly from the existing regulations. The sections on communications and program accessibility are based on the regulations for federally conducted programs, which provide specific guidance on the requirements applicable to communications and explain that the statute does not require any action that the entity can demonstrate would result in a fundamental alteration in the nature of the service, program, or activity or in undue financial and administrative burdens.

The proposed rule is organized into seven subparts. Subpart A, "General," includes the purpose and application sections, describes the relationship of the Act to other laws, and defines key terms used in the regulation. It also includes administrative requirements, adapted from the section 504 regulations, for self-evaluations, notices, designation of responsible employees, and adoption of grievance procedures by public entities.

Subpart B, "General Requirements," contains the general prohibitions of discrimination based on the section 504

regulations. It also contains certain "miscellaneous" provisions derived from title V of the Act that involve issues such as retaliation and coercion against those asserting ADA rights, illegal use of drugs, and restrictions on smoking. These provisions are also included in the Department's proposed title III regulation, as is the general provision on maintenance of accessible features.

Subpart C addresses employment by public entities, which is also covered by title I of the Act. The Department proposes to adopt, as compliance standards for employment under title II, the definitions and requirements that will be established by the Equal Employment Opportunity Commission (EEOC) for title I.

Subpart D, which is also based on the section 504 regulations, sets out the requirements for program accessibility in existing facilities and in new construction and alterations.

Subpart E contains specific requirements relating to communications.

Subpart F establishes administrative procedures for enforcement of title II. As provided by section 203 of the Act, these are based on the procedures for enforcement of section 504, which, in turn, are based on the enforcement procedures for title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d to 2000d–4a). Subpart F also restates the provisions of title V of the ADA on attorneys fees, alternative means of dispute resolution, the effect of unavailability of technical assistance, and State immunity.

Subpart G designates the Federal agencies responsible for investigation of complaints under this part. It assigns enforcement responsibility for particular public entities, on the basis of their major functions, to nine Federal agencies that currently have substantial responsibilities for enforcing section 504. The Department of Justice would have enforcement responsibility for all State and local government entities not assigned to other designated agencies. The part would not, however, displace the existing enforcement authorities of the Federal funding agencies under section 504.

Section-by-Section Analysis

Subpart A—General

Section 35.101 Purpose.

Section 35.101 states the purpose of the proposed rule, which is to effectuate subtitle A of title II of the Americans with Disabilities Act of 1990 (the Act), which prohibits discrimination on the basis of disability by public entities. This part does not, however, apply to matters within the scope of the authority of the Secretary of Transportation under the Act.

Section 35.102 Application

Except as provided in paragraph (b) of this section, the proposed regulation applies to all services, programs or activities provided or made available by public entities, as that term is defined in § 35.104. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination on the basis of handicap in federally assisted programs and activities, already covers those activities of public entities that receive Federal financial assistance. Title II of the ADA extends this prohibition of discrimination to include all services, programs, and activities provided or made available by State and local governments or instrumentalities or agencies thereof, regardless of the receipt of Federal financial assistance. The scope of Title II's coverage of public entities is comparable to the coverage of Federal Executive agencies under the 1978 amendment to section 504, which extended section 504's application to all programs and activities "conducted by" Federal Executive agencies, in that title II applies to anything a public entity does. Aside from employment, which is also covered by title I of the Act, there are two major categories of programs or activities covered by this regulation: those involving general public contact as part of ongoing operations of the entity and those directly administered by the entities for program beneficiaries and participants. Activities in the first category include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the entity's facilities. Activities in the second category include programs that provide State or local government services or benefits.

Paragraph (b) of § 35.102 explains that public transportation services, programs, and activities of public entities covered by subtitle B of title II of the Act are subject to regulations issued by the Department of Transportation at 49 CFR part 37. The specific provisions in the Department of Transportation's regulation, including the limitations on those provisions, control over the general provisions of this part in circumstances where both specific and general provisions apply. Resort to the general provisions of this part is only appropriate where there are no applicable specific rules of guidance in the Department of Transportation's regulation. For example, services, programs, and activities that are covered by the Department of Transportation's regulation implementing subtitle B are not required to be included in the self-evaluation required by § 35.105.

Section 35.103 Relationship to Other Laws

Section 35.103 restates the requirements of section 501(b) of the ADA. It makes clear that Congress did not intend to displace any of the rights or remedies provided by other Federal laws (including section 504) or other State laws (including State common law) that provide greater or equal protection to individuals with disabilities. As discussed above, the standards adopted by title II of the ADA for State and local government services are generally the same as those required under section 504 for federally assisted programs and activities. Subpart F of the proposed regulation establishes compliance procedures for processing complaints covered by both this part and section 504.

With respect to State law, a plaintiff may choose to pursue claims under a State that does not confer greater substantive rights, if the alleged violation is protected under the alternative law and the remedies are greater. For example, a person with a physical disability could seek damages under a State law that allows compensatory and punitive damages for discrimination on the basis of physical disability, but not on the basis of mental disability. In that situation, the State law would provide narrower coverage, by excluding mental disabilities, but broader remedies, and an individual covered by both laws could choose to bring an action under both laws. Moreover, State tort claims confer greater remedies and are not preempted by the ADA. A plaintiff may join a State tort claim to a case brought under the ADA. In such a case, the plaintiff must, of course, prove all the elements of the State tort claim in order to prevail under that cause of action.

Because the ADA itself allows exclusion of clients and customers who pose a direct threat to the health or safety of others, a State public health law that guards against such threats, but that does not discriminate against people with disabilities, would be a law providing protection equal to that provided by the ADA and hence would not be preempted by the ADA.

Section 35.104 Definitions

Act. The word "Act" is used in this part to refer to the Americans with Disabilities Act of 1990, Public Law 101–

336, which is also referred to as the "ADA."

Assistant Attorney General. The term "Assistant Attorney General" refers to the Assistant Attorney General of the Civil Rights Division of the Department of Justice.

Auxiliary aids and services. Auxiliary aids and services include a wide range of services and devices. The definition in § 35.104 provides a list of examples of auxiliary aids and services that is taken from the definition of auxiliary aids and services in section 3(1) of the ADA and supplemented by examples from regulations implementing section 504 in federally conducted programs (see, 28 CFR 39.103).

Complete complaint. "Complete complaint" is defined to include all the information necessary to enable the Federal agency designated under subpart G as responsible for investigation of a complaint to initiate its investigation.

Current illegal use of drugs. The phrase "current illegal use of drugs" is used in § 35.131. Its meaning is discussed in the preamble for that section.

Designated agency. The term "designated agency" is used to refer to the Federal agency designated under subpart G of this proposed rule as responsible for carrying out the administrative enforcement responsibilities established by subpart F of the proposed rule.

Disability. The definition of the term "disability" is the same as the definition in the proposed title III regulation. It is comparable to the definition of the term "individual with handicaps" in section 7(8) of the Rehabilitation Act of 1973 and section 802(h) of the Fair Housing Act. The Education and Labor Committee report makes clear that the analysis of the term "individual with handicaps" by the Department of Health, Education, and Welfare (HEW) in its regulations implementing section 504 (42 FR 22685 (May 4, 1977)) and the analysis by the Department of Housing and Urban Development in its regulations implementing the Fair Housing Amendments Act of 1988 (54 FR 3232 (Jan. 23, 1989)) should also apply fully to the term "disability." H.R. Rep. No. 485, 101st Cong., 2d Sess., pt. 2, at 50 (1990) (hereinafter "Education and Labor report).

The use of the term "disability" instead of "handicap" and the term "individual with a disability" instead of "individual with handicaps" represents an effort by the Congress to make use of up-to-date, currently accepted terminology. As with racial and ethnic epithets, the choice of terms to apply to a person with a disability is overlaid with stereotypes, patronizing attitudes, and other emotional connotations. Many individuals with disabilities, and organizations representing such individuals, object to the use of such terms as "handicapped person" or "the handicapped." In other recent legislation, Congress also recognized this shift in terminology, *e.g.*, by changing the name of the National Council on the Handicapped to the National Council on Disability (Pub. L. 100–630).

In enacting the Americans with Disabilities Act, Congress concluded that it was important for the current legislation to use terminology most in line with the sensibilities of most Americans with disabilities. No change in definition or substance is intended nor should be attributed to this change in phraseology.

The term "disability" means, with respect to an individual—

(A) A permanent or temporary physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) A record of such an impairment; or

(C) Being regarded as having such an impairment. If an individual meets any one of these three tests, he or she is considered to be an individual with a disability for purposes of coverage under the Americans with Disabilities Act.

Congress adopted this same basic definition of "disability," first used in the Rehabilitation Act of 1973 and in the Fair Housing Amendments Act of 1988, for a number of reasons. First, it has worked well since it was adopted in 1974. Second, it would not be possible to guarantee comprehensiveness by providing a list of specific disabilities, especially because new disorders may be recognized in the future, as they have since the definition was first established in 1974.

Test A—A physical or mental impairment that substantially limits one or more of the major life activities of such individual

Physical or mental impairment. Under the first test, an individual must have a physical or mental impairment. As explained in paragraph (1)(i)(A) of the definition, "impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine. It also means any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. This is the list used in the regulations for section 504 of the Rehabilitation Act of 1973 (see, *e.g.*, 45 CFR 84.3(j)(2)(i)).

It is not possible to include a list of all the specific conditions, contagious and noncontagious diseases, or infections that would constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list, particularly in light of the fact that new disorders may develop in the future. However, the list of examples in paragraph (1) (ii) of the definition includes: Orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease, tuberculosis, drug addiction, and alcoholism.

The list of examples of "physical or mental impairments" in paragraph (I)(ii) is the same as those contained in many section 504 regulations, except for the addition of the phrase "contagious and noncontagious" to describe the types of diseases and conditions included, and the addition of "HIV disease" and "tuberculosis" to the list of examples. These additions are based on the committee reports, caselaw, and official legal opinions interpreting section 504. In *School Board of Nassau County* v. *Arline,* 480 U.S. 273 (1987), a case involving an individual with tuberculosis, the Supreme Court held that people with contagious diseases are entitled to the protections afforded by section 504. Following the *Arline* decision, this Department's Office of Legal Counsel issued a legal opinion that concluded that symptomatic HIV disease is an impairment that substantially limits a major life activity; therefore it has been included in the definition of disability under this part. The opinion also concluded that asymptomatic HIV disease is an impairment which may substantially limit a major life activity either because of its actual effect on the individual with HIV disease or because the reactions of other people to individuals with HIV disease cause such individuals to be treated as though they are disabled. See Memorandum from Douglas W. Kmiec, Acting Assistant Attorney General, Office of Legal Counsel, Department of Justice, to Arthur B. Culvahouse, Jr., Counsel to the President (Sept. 27, 1988), reprinted in Hearings on S. 933, the Americans with Disabilities Act, Before the Subcomm. on the Handicapped of

the Senate Comm. on Labor and Human Resources, 101st. Cong., 1st Sess. 346 (1989).

Paragraph (1)(iii) states that the phrase "physical or mental impairment" does not include homosexuality or bisexuality. These conditions were never considered impairments under other Federal disability laws. Section 511(a) of the statute makes clear that they are likewise not to be considered impairments under the Americans with Disabilities Act.

Physical or mental impairment does not include simple physical characteristics, such as blue eyes or black hair. Nor does it include environmental, cultural, economic, or other disadvantages, such as having a prison record, or being poor. Nor is age a disability. However, a person who has these characteristics and also has a physical or mental impairment may be considered as having a disability for purposes of the Americans with Disabilities Act based on the impairment.

Substantial limitation of a major life activity. Under Test A, the impairment must be one that "substantially limits a major life activity." Major life activities include such things as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

For example, a person who is paraplegic is substantially limited in the major life activity of walking, a person who is blind is substantially limited in the major life activity of seeing, and a person who is mentally retarded is substantially limited in the major life activity of learning.

A person is considered an individual with a disability for purposes of Test A, the first prong of the definition, when the individual's important life activities are restricted as to the conditions, manner, or duration under which they can be performed in comparison to most people. A person with a minor, trivial impairment, such as a simple infected finger, is not impaired in a major life activity. A person who can walk for 10 miles continuously is not substantially limited in walking merely because on the eleventh mile, he or she begins to experience pain, because most people would not be able to walk eleven miles without experiencing some discomfort.

An impairment is not necessarily excluded from the definition of "disability" simply because it is temporary. The duration, or expected duration, of an impairment is, however, one factor that may properly be considered in determining whether the impairment substantially limits a major life activity. Temporary impairments, such as a broken leg, are not commonly regarded as disabilities, but in rare circumstances the degree of the limitation and its expected duration may be substantial. Similarly, obesity rarely results in a substantial limitation on a major life activity. It must be emphasized that each case involving a determination of substantial limitation must be evaluated on its own merits.

The question of whether a person has a disability should be assessed without regard to the availability of mitigating measures, such as reasonable accommodations or auxiliary aids. For example, a person who is hard of hearing is substantially limited in the major life activity of hearing, even though the loss may be improved through the use of a hearing aid. Likewise, persons with impairments, such as epilepsy or diabetes, that substantially limit a major life activity, are covered under the first prong of the definition of disability, even if the effects of the impairment are controlled by medication.

Test B—A record of such an impairment

This test is intended to cover those who have a record of an impairment. As explained in paragraph (3) of the proposed rule's definition of disability, this includes a person who has a history of an impairment that substantially limited a major life activity, such as someone who has recovered from an impairment. It also includes persons who have been misclassified as having an impairment.

This provision is included in the definition in part to protect individuals who have recovered from a physical or mental impairment that previously substantially limited them in a major life activity. Discrimination on the basis of such a past impairment is prohibited. Frequently occurring examples of the first group (those who have a history of an impairment) are persons with histories of mental or emotional illness, heart disease, or cancer; examples of the second group (those who have been misclassified as having an impairment) are persons who have been misclassified as having mental retardation or mental illness.

Test C—Being regarded as having such an impairment

This test, as contained in paragraph (4) of the definition, is intended to cover persons who are treated by a public entity as having a physical or mental impairment that substantially limits a major life activity. It applies when a person is treated as if he or she has an impairment that substantially limits a major life activity, regardless of whether that person has an impairment.

The Americans with Disabilities Act uses the same "regarded as" test set forth in the regulations implementing section 504 of the Rehabilitation Act. See, *e.g.*, 28 CFR 42.540(k)(2)(iv), which provides:

> (iv) "Is regarded as having an impairment" means (A) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) Has none of the impairments defined in paragraph (k)(2)(i) of this section but is treated by a recipient as having such an impairment.

The perception of the covered entity is a key element of this test. A person who perceives himself or herself to have an impairment, but does not have an impairment, and is not treated as if he or she has an impairment, is not protected under this test.

A person would be covered under this test if a public entity refused to serve the person because it perceived that the person had an impairment that limited his or her enjoyment of the goods or services being offered.

For example, persons with severe burns often face discrimination in community activities, resulting in substantial limitation of major life activities. These persons would be covered under this test based on the attitudes of others towards the impairment, even if they did not view themselves as "impaired."

The rationale for this third test, as used in the Rehabilitation Act of 1973, was articulated by the Supreme Court in *Arline*, 480 U.S. 273 (1987). The Court noted that although an individual may have an impairment that does not in fact substantially limit a major life activity, the reaction of others may prove just as disabling. "Such an impairment might not diminish a person's physical or mental capabilities, but could nevertheless substantially limit that person's ability to work as a result of the negative reactions of others to the impairment." *Id.* at 283. The Court concluded that, by including this test in the Rehabilitation Act's definition, "Congress acknowledged that society's accumulated myths and fears about disability and diseases are as handicapping as are the physical limitations that flow from actual impairment." *Id.* at 284.

Thus, a person who is denied services or benefits by a public entity because of myths, fears, and stereotypes associated with disabilities would be covered under this third test whether or not the

person's physical or mental condition would be considered a disability under the first or second test in the definition.

If a person is refused admittance on the basis of an actual or perceived physical or mental condition, and the public entity can articulate no legitimate reason for the refusal (such as failure to meet eligibility criteria), a perceived concern about admitting persons with disabilities could be inferred and the individual would qualify for coverage under the "regarded as" test. A person who is covered because of being regarded as having an impairment is not required to show that the public entity's perception is inaccurate (e.g., that he will be accepted by others) in order to receive benefits from the public entity.

Paragraph (5) of the definition lists certain conditions that are not included within the definition of "disability." The excluded conditions are: Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, other sexual behavior disorders, compulsive gambling, kleptomania, pyromania, and psychoactive substance use disorders resulting from current illegal use of drugs. Unlike homosexuality and bisexuality, which are not considered impairments under either section 504 or the Americans with Disabilities Act (see the definition of "disability," paragraph (1)(iv)), the conditions listed in paragraph (5), except for transvestism, are not necessarily excluded as impairments under section 504. (Transvestism was excluded from the definition of disability for section 504 by the Fair Housing Act Amendments of 1988, Pub. L. 100–430, section 6(b).)

Drug. The definition of the term "drug" is taken from section 510(d)(2) of the ADA.

Facility. "Facility" means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located. Senate and House committee reports made clear that the definition of facility was drawn from the definition of facility in the current Federal regulations implementing section 504 of the Rehabilitation Act. Education and Labor report at 114. It includes both indoor and outdoor areas where human-constructed improvements, structures, equipment, or property have been added to the natural environment.

Illegal use of drugs. The definition of "illegal use of drugs" is taken from section 510(d)(1) of the Act and clarifies that the term includes the illegal use of one or more drugs.

Individual with a disability means a person who has a disability but does not include an individual who is currently illegally using drugs, when the public entity acts on the basis of such use. The phrase "current illegal use of drugs" is explained in § 35.131.

Public entity. The term "public entity" is defined in accordance with section 201(l) of the ADA as any State or local government; any department, agency, special purpose district, or other instrumentality of a State or States or local government; or the National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act).

Qualified individual with a disability. The definition of "qualified individual with a disability" is taken from section 201(2) of the Act, which is derived from the definition of "qualified handicapped person" in the Department of Health and Human Services' regulation implementing section 504 (45 CFR § 84.3(k)). It combines the definition at 45 CFR 84.3(k)(1) for employment ("a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question") with the definition for other services at 45 CFR 84.3(k)(4) ("a handicapped person who meets the essential eligibility requirements for the receipt of such services"), with specific references to the requirements of title II.

State. The definition of "State" is identical to the statutory definition in section 3(3) of the ADA.

Section 35.105 Self-evaluation

Section 35.105 establishes a requirement, based on the section 504 regulations for federally assisted and federally conducted programs, that a public entity evaluate its current policies and practices to identify and correct any that are not consistent with the requirements of this part. Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with individuals with disabilities, which has promoted both effective and efficient implementation of section 504. The Department expects that it will likewise be useful to public entities newly covered by the ADA. Paragraph (d) provides that the self-evaluation required by this section shall apply only to programs not subject to section 504 or those policies and practices, such as those involving communications access, that have not already been included in a self-evaluation required under an existing regulation implementing section 504.

Section 35.106 Notice

Section 35.106 requires a public entity to disseminate sufficient information to applicants, participants, beneficiaries, and other interested persons to inform them of the rights and protections afforded by the ADA and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe a public entity's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section 35.107 Designation of Responsible Employee and Adoption of Grievance Procedures

Section 35.107(a) requires public entities with 50 or more employees to designate at least one employee responsible for coordination of its efforts to carry out its responsibilities under this part. The requirement for designation of a responsible employee is derived from the HEW regulation implementing section 504 in federally assisted programs (45 CFR 84.7(a)). The requirement for designation of a particular employee and dissemination of information about how to locate that employee helps to ensure that individuals dealing with large agencies are able to easily find a responsible person who is familiar with the requirements of the Act and this part and can communicate those requirements to other individuals in the agency who may be unaware of their responsibilities. This paragraph in no way limits a public entity's obligation to ensure that all of its employees comply with the requirements of this part, but it ensures that any failure by individual employees can be promptly corrected by the designated employee.

Section 35.107(b) requires public entities to establish grievance procedures for resolving complaints of violations of this part. Similar requirements are found in the section 504 regulations for federally assisted programs (see, *e.g.*, 45 CFR 84.7(b)). The proposed rule, like the regulations for federally assisted programs, provides for investigation and resolution of complaints by a Federal enforcement agency. It is the view of the Department that public entities subject to this part should be required to establish a mechanism for resolution of complaints at the local level without requiring the

complainant to resort to the Federal complaint procedures established under subpart F. Complainants would not, however, be required to exhaust the public entity's grievance procedures before filing a complaint under subpart F. Delay in filing the complaint at the Federal level caused by pursuit of the remedies available under the grievance procedure would generally be considered good cause for extending the time allowed for filing under § 35.170(b).

Subpart B—General Requirements

Section 35.130 General Prohibitions Against Discrimination

The general prohibitions against discrimination in the proposed rule are based on the prohibitions in existing regulations implementing section 504 and, therefore, are already familiar to State and local entities covered by section 504.

Paragraph (a) restates the nondiscrimination mandate of section 202 of the ADA. The remaining paragraphs in § 35.130 establish the general principles for analyzing whether any particular action of the public entity violates this mandate.

Paragraph (b) prohibits overt denials of equal treatment of individuals with disabilities. A public entity may not refuse to provide an individual with disabilities with an equal opportunity to participate in or benefit from its program simply because the person has a disability.

Paragraph (b)(1)(i) provides that it is discriminatory to deny a person with a disability the right to participate in or benefit from the aid, benefit, or service provided by a public entity. Paragraph (b)(1)(ii) provides that the aids, benefits, and services provided to persons with disabilities must be equal to those provided to others, and paragraph (b)(1)(iii) requires that the aids, benefits, or services provided to individuals with disabilities must be as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as those provided to others. These paragraphs are taken from the regulations implementing section 504 and simply restate principles long established under section 504.

Paragraph (b)(1)(iv) permits the public entity to develop separate or different aids, benefits, or services when necessary to provide individuals with disabilities with an equal opportunity to participate in or benefit from the public entity's programs or activities, but only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Paragraph (b)(1)(iv) must be read in conjunction with paragraphs (b)(2), (d), and (e). Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified individual with disabilities still has the right to choose to participate in the program that is not designed to accommodate individuals with disabilities. Paragraph (d) requires that a public entity administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities, and paragraph (e), which is based on section 501(d) of the Act, provides that a public entity may not require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not to accept.

Integration is fundamental to the purposes of the Americans with Disabilities Act. Provision of segregated accommodations and services relegate persons with disabilities to second-class status. For example, it would be a violation of this provision to require persons with disabilities to eat in the back room of a government cafeteria or to refuse to allow a person with a disability the full use of recreation or exercise facilities because of stereotypes about the person's ability to participate.

Paragraph (b)(2) specifies that, notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different. Paragraph (e), which is derived from section 501(d) of the Americans with Disabilities Act, states that nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit that he or she chooses not to accept.

Taken together, these provisions are intended to prohibit exclusion and segregation of individuals with disabilities and the denial of equal opportunities enjoyed by others, based on, among other things, presumptions, patronizing attitudes, fears, and stereotypes about individuals with disabilities. Consistent with these standards, public entities are required to make decisions based on facts applicable to individuals and not on the basis of presumptions as to what a class of individuals with disabilities can or cannot do.

These provisions should not be construed to jeopardize in any way the continued viability of separate schools providing special education for particular categories of children with disabilities, sheltered workshops, special recreational programs, and other similar programs.

At the same time, individuals with disabilities cannot be denied the opportunity to participate in programs that are not separate or different. This is an important and overarching principle of the Americans with Disabilities Act. Separate, special, or different programs that are designed to provide a benefit to persons with disabilities cannot be used to restrict the participation of persons with disabilities in general, integrated activities.

For example, a person who is blind may wish to decline participating in a special museum tour that allows persons to touch sculptures in an exhibit and instead tour the exhibit at his or her own pace with the museum's recorded tour. It is not the intent of this section to require the person who is blind to avail himself or herself of the special tour. Modified participation for persons with disabilities must be a choice, not a requirement.

In addition, it would not be a violation of this section for a public entity to offer recreational programs specially designed for children with mobility impairments. However, it would be a violation of this section if the entity then excluded these children from other recreational services for which they are qualified to participate when these services are made available to nondisabled children, or if the entity required children with disabilities to attend only designated programs.

Paragraph (b)(1)(v) provides that a public entity may not aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity's program. This paragraph is taken from the regulations implementing section 504 for federally assisted programs.

Paragraph (b)(1)(vi) prohibits the public entity from denying a qualified individual with a disability the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vii) prohibits the public entity from limiting a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the public entity from utilizing criteria or methods of administration that deny individuals with disabilities access to the public entity's services, programs, and activities or that perpetuate the discrimination of another public entity, if both public entities are subject to common administrative control or are agencies of the same State. The phrase "criteria or methods of administration" refers to official written policies of the public entity and to the actual practices of the public entity. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny individuals with disabilities an effective opportunity to participate. This standard is consistent with the interpretation of section 504 by the U.S. Supreme Court in *Alexander* v. *Choate*, 469 U.S. 287 (1985). The Court in *Choate* explained that members of Congress made numerous statements during passage of section 504 regarding eliminating architectural barriers, providing access to transportation, and eliminating discriminatory effects of job qualification procedures. The Court then noted: "These statements would ring hollow if the resulting legislation could not rectify the harms resulting from action that discriminated by effect as well as by design." *Id.* at 297 (footnote omitted).

Paragraph (b)(4) specifically applies the prohibition enunciated in § 35.130(b)(3) to the process of selecting sites for construction of new facilities or selecting existing facilities to be used by the public entity. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(5) prohibits the public entity, in the selection of procurement contractors, from using criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

Paragraph (b)(6) prohibits the public entity from discriminating against qualified individuals with disabilities on the basis of disability in the granting of licenses or certification. A person is a "qualified individual with a disability" with respect to licensing or certification if he or she can meet the essential eligibility requirements for receiving the license or certification (see § 35.104).

In addition, the public entity may not establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. For example, the public entity must comply with this requirement when establishing safety standards for the operations of licensees. In that case the public entity must ensure that standards that it promulgates do not discriminate against the employment of qualified individuals with disabilities in an impermissible manner.

Paragraph (b)(6) does not extend the requirements of the Act or this part directly to the programs or activities of licensees or certified entities themselves. The programs or activities of licensees or certified entities are not themselves programs or activities of the public entity merely by virtue of the license or certificate.

Paragraph (b)(7) is a specific application of the requirement under the general prohibitions of discrimination that public entities make reasonable modifications in policies, practices, or procedures where necessary to avoid discrimination on the basis of disability. Section 302(b)(2)(A)(ii) of the ADA sets out this requirement specifically for public accommodations covered by title III of the Act, and the House Judiciary Committee Report directs the Attorney General to include those specific requirements in the title II regulation to the extent that they do not conflict with the regulations implementing section 504. H.R. Rep. No. 485, 101st Cong., 2d Sess., part 3, at 52 (1990)(hereinafter "Judiciary report").

For example, a parking facility operated by a public entity may be required to modify a rule barring all vans with raised roofs (including those that are wheelchair accessible), if a wheelchair-user operating such a van wishes to park in the facility and overhead structures are, in fact, high enough to accommodate the height of the van.

Paragraph (c) provides that nothing in this part prohibits a public entity from providing benefits, services, or advantages to individuals with disabilities, or to a particular class of individuals with disabilities, beyond those required by this part. It is derived from a provision in the section 504 regulations that permits programs conducted pursuant to Federal statute or Executive order that are designed to benefit only individuals with disabilities or a given class of individuals with disabilities to be limited to those individuals with disabilities. Section 504 ensures that federally assisted programs are made available to all individuals, without regard to disabilities, unless the Federal program under which the assistance is provided is specifically limited to individuals with disabilities or a particular class of individuals with disabilities. Because coverage under this part is not limited to federally assisted programs, paragraph (c) has been revised to clarify that State and local governments may provide special benefits, beyond those required by the nondiscrimination requirements of this part, that are limited to individuals with disabilities or a particular class of individuals with disabilities, without thereby incurring additional obligations to persons without disabilities or to other classes of individuals with disabilities.

Paragraphs (d) and (e), previously referred to in the discussion of paragraph (b)(1)(iv), provide that the public entity must administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities, *i.e.*, in a setting that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible, and that persons with disabilities must be provided the option of declining to accept a particular accommodation.

Paragraph (f) provides that a public entity may not place a surcharge on a particular individual with a disability, or any group of individuals with disabilities, to cover any costs of measures required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part. Such measures may include the provision of auxiliary aids or of modifications required to provide program accessibility.

Section 35.131 Illegal Use of Drugs

Section 35.131 effectuates section 510 of the ADA, which clarifies the Act's application to people who use drugs illegally. Paragraph (a) provides that this part does not prohibit discrimination based on an individual's current illegal use of drugs.

The Act and the regulation distinguish between *illegal* use of drugs and the legal use of substances, whether or not those substances are "controlled substances," as defined in the Controlled Substances Act (21 U.S.C. 812). Alcohol is not a controlled substance, so use of alcohol is not affected by § 35.131 (although alcoholics are individuals with disabilities, subject to the protections of the statute). Section 35.131 also does not affect use of controlled substances pursuant to a valid prescription, or other use that is authorized by the Controlled Substances Act or any other provision of Federal law. It is the *use* of the substance, rather than the substance itself, that is illegal.

A distinction is also made between the use of a substance and the status of being addicted to that substance. Addiction is a disability, and addicts are

individuals with disabilities protected by the Act. The protection, however, does not extend to actions based on the illegal use of the substance. In other words, an addict cannot use the fact of his or her addiction as a defense to an action based on illegal use of drugs. This distinction is not artificial. Congress intended to deny protection to people who engage in the illegal use of drugs, whether or not they are addicted, but to provide protection to addicts so long as they are not currently using drugs.

A third distinction is the difficult one between current use and former use. The definition of "current illegal use of drugs" in § 35.104, which is based on the report of the Conference Committee, H.R. Conf. Pep. No. 596, 101st Cong., 2d Sess. 64 (1990) (hereinafter "Conference report"), is "illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem."

Paragraph (a)(2)(i) specifies that an individual who has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully and who is not engaging in current illegal use of drugs is protected. Paragraph (a)(2)(ii) clarifies that an individual who is currently participating in a supervised rehabilitation program and is not engaging in current illegal use of drugs is protected. Paragraph (a)(2)(iii) provides that a person who is erroneously regarded as engaging in current illegal use of drugs, but who is not engaging in such use, is protected.

Paragraph (b) provides a limited exception to the exclusion of current illegal users of drugs from the protections of the Act. It prohibits denial of health services, or services provided in connection with drug rehabilitation to an individual on the basis of current illegal use of drugs, if the individual is otherwise entitled to such services. A health care facility, such as a hospital or clinic, may not refuse treatment to an individual in need of the services it provides on the grounds that the individual is illegally using drugs, but it is not required by this section to provide services that it does not ordinarily provide. For example, a health care facility that specializes in a particular type of treatment, such as care of burn victims, is not required to provide drug rehabilitation services, but it cannot refuse to treat a individual's burns on the grounds that the individual is illegally using drugs.

Paragraph (c) expresses Congress' intention that the Act be neutral with respect to testing for illegal use of drugs. This paragraph implements the provision in section 510(b) of the Act that allows entities "to adopt or administer reasonable policies or procedures, including but not limited to drug testing," that ensure that an individual who is participating in a supervised rehabilitation program, or who has completed such a program or otherwise been rehabilitated successfully is no longer engaging in the illegal use of drugs. The section is not to be "construed to encourage, prohibit, restrict, or authorize the conducting of testing for the illegal use of drugs."

Paragraph 35.131(c) clarifies that it is not a violation of this part to adopt or administer reasonable policies or procedures to ensure that an individual who formerly engaged in the illegal use of drugs is not currently engaging in illegal use of drugs. Any such policies or procedures must, of course, be reasonable, and must be designed to identify accurately the illegal use of drugs. This paragraph does not authorize inquiries, tests, or other procedures that would disclose use of substances that are not controlled substances or are taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law, because such uses are not included in the definition of "illegal use of drugs."

Section 35.132 Smoking

Section 35.132 restates the clarification in section 501(b) of the Act that the Act does not preclude the prohibition of, or imposition of restrictions on, smoking in transportation covered by title II.

Section 35.133 Maintenance of Accessible Features

Section 35.133 provides that a public entity shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities by the Act or this part. The Act requires that, to the maximum extent feasible, facilities must be accessible to, and usable by, individuals with disabilities. This section recognizes that it is not sufficient to provide features such as accessible routes, elevators, or ramps, if those features are not maintained in a manner that enables individuals with disabilities to use them. Inoperable elevators, locked automatic doors, or "accessible" routes that are obstructed by furniture, filing cabinets, or potted plants are neither "accessible to" nor "usable by" individuals with disabilities.

It is, of course, impossible to guarantee that mechanical devices will never fail to operate. Therefore, it is not intended that isolated instances of mechanical failure be considered violations of the Act or this part. However, repeated mechanical failures due to improper or inadequate maintenance would violate this part. Failure of the public entity to ensure that accessible routes are properly maintained and free of obstructions, or failure to arrange prompt repair of inoperable elevators or other equipment intended to provide access would also violate this part.

Section 35.134 Retaliation or coercion

Section 35.134 implements section 503 of the ADA, which prohibits retaliation against any person who exercises his or her rights under the Act. Paragraph (a) provides that no private or public entity shall discriminate against any individual because that individual has exercised his or her right to oppose any act or practice made unlawful by the Act or this part, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the Act or this part.

Paragraph (b) provides that no private or public entity shall coerce, intimidate, threaten, or interfere with any individual in the exercise of his or her rights under this part or because that individual aided or encouraged any other individual in the exercise or enjoyment of any right granted or protected by the Act or this part.

Subpart C—Employment

Section 35.140 Employment discrimination prohibited

Title II of the ADA applies to all activities of public entities, including their employment practices. In its report on title II of the ADA, the House Education and Labor Committee stated that title II "essentially simply extends the antidiscrimination prohibition embodied in section 504 to all actions of state and local governments," and that "the forms of discrimination prohibited by section 202 (are) identical to those set out in the applicable provisions of titles I and III of this legislation." Education and Labor report at 84. Section 504's broad coverage of employment practices is well-established. See *Consolidated Rail Corp.* v. *Darrone*, 465 U.S. 624 (1984).

Section 204(b) of the Act requires that regulations issued to implement title II be consistent not only with specified section 504 regulations but with the Act itself. In title I of the ADA, Congress

carefully considered the remedial scheme that it wished to create for attacking discrimination in employment. In order to give effect to these provisions, § 35.140 of the proposed rule provides that the definitions, requirements, and procedures of title I of the Act, as established by the Equal Employment Opportunity Commission in 29 CFR part 1630, apply to complaints of employment discrimination against public entities.

This incorporation of title I standards includes the title I definition of "employer." Under that definition, a public entity with 25 or more employees will only become subject to the ADA's employment provisions on July 26, 1992, and those with 15–24 employees on July 26, 1994. Public entities with fewer than 15 employees will not be subject to the ADA's employment requirements.

Section 35.140 does not affect a public entity's coverage under section 504 with respect to programs or activities receiving Federal financial assistance.

Subpart D—Program Accessibility

Section 35.149 Discrimination Prohibited

Section 35.149 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 35.150 and 35.151.

Section 35.150 Existing Facilities

Consistent with section 204(b) of the Act, this proposed regulation adopts the program accessibility concept found in the section 504 regulations for federally conducted programs or activities (e.g., 28 CFR part 39). Section 35.150 requires that each service, program, or activity conducted by a public entity, when viewed in its entirety, be readily accessible to and usable by individuals with disabilities. The regulation makes clear, however, that a public entity is not required to make each of its existing facilities accessible (§ 35.150(a)(1)).

Paragraph (a)(2), which establishes a special limitation on the obligation to ensure program accessibility in historic preservation programs, is discussed below in connection with paragraph (b).

Paragraph (a)(3), which is taken from the section 504 regulations for federally conducted programs, generally codifies case law that defines the scope of the public entity's obligation to ensure program accessibility. This paragraph provides that, in meeting the program accessibility requirement, a public entity is not required to take any action that would result in a fundamental alteration in the nature of its service, program, or activity or in undue financial and administrative burdens. A similar limitation is provided in § 35.164.

This paragraph does not establish an absolute defense; it does not relieve a public entity of all obligations to individuals with disabilities. Although a public entity is not required to take actions that would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that individuals with disabilities receive the benefits or services provided by the public entity.

It is the Department's view that compliance with § 35.150(a), like compliance with the corresponding provisions of the section 504 regulations for federally conducted programs, would in most cases not result in undue financial and administrative burdens on a public entity. In determining whether financial and administrative burdens are undue, all public entity resources available for use in the funding and operation of the service, program, or activity should be considered. The burden of proving that compliance with paragraph (a) of § 35.150 would fundamentally alter the nature of a service, program, or activity or would result in undue financial and administrative burdens rests with the public entity. The decision that compliance would result in such alteration or burdens must be made by the public entity head or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the public entity head's decision or failure to make a decision may file a complaint under the compliance procedures established in subpart F.

Paragraph (b)(1) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the public entity shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of individuals with disabilities. Structural changes in existing facilities are required only when there is no other feasible way to make the public entity's program accessible. (It should be noted that "structural changes" include all physical changes to a facility; the term does not refer only to changes to structural features, such as removal of or alteration to a load-bearing structural member.) The public entity may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

The legislative history of title II of the ADA makes it clear that, under title II, "local and state governments are required to provide curb cuts on public streets." Education and Labor report at 84. As the rationale for the provision of curb cuts, the House report explains, "The employment, transportation, and public accommodation sections of . . . (the ADA) would be meaningless if people who use wheelchairs were not afforded the opportunity to travel on and between the streets." *Id.* Section 35.151, which establishes accessibility requirements for new construction and alterations, will apply to any curbing on a public street, road or highway that is to be constructed or altered by a public entity, and would require the entity to install ramps at any intersection having curbs or other barriers to entry onto the street or road from a sidewalk. The general requirement for program accessibility would apply to the provision of curb cuts at existing crosswalks. Similarly, a public entity should provide an adequate number of accessible parking spaces in existing parking lots or garages over which it has jurisdiction.

Historic preservation programs. Paragraph (a)(2) of § 35.150 provides a special limitation on the obligation to ensure program accessibility that is applicable only to historic preservation programs. In order to avoid possible conflict between the congressional mandates to preserve historic properties, on the one hand, and to eliminate discrimination against individuals with disabilities on the other, paragraph (a)(2) provides that, in historic preservation programs, the public entity is not required to take any action that would result in a substantial impairment of significant historic features of an historic property.

Nevertheless, because the primary benefit of an historic preservation program is uniquely the experience of the historic property itself, paragraph (b)(2) requires the public entity to give priority to methods of providing program accessibility that permit individuals with disabilities to have physical access to the historic property. This priority on physical access may also be viewed as a specific application of the general requirement that the public entity administer programs in the most integrated setting appropriate to the needs of qualified individuals with disabilities (§ 35.130(d)). Only when

providing physical access would result in a substantial impairment of significant historic features, a fundamental alteration in the nature of the program, or in undue financial and administrative burdens, may the public entity adopt alternative methods for providing program accessibility that do not ensure physical access. Examples of some alternative methods are provided in paragraph (b)(2).

The special limitation on program accessibility set forth in paragraph (a)(2) is applicable only to programs that have preservation of historic properties as a primary purpose. Narrow application of the special limitation is justified because of the inherent flexibility of the program accessibility requirement. Where historic preservation is not a primary purpose of the program the public entity is not bound to a particular facility. It can relocate all or part of its program to an accessible facility, make home visits, or use other standard methods of achieving program accessibility without making structural alterations that might impair significant historic features of the historic property.

Time periods. Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. Like the regulations for federally assisted programs (e.g., 28 CFR 41.57(b)), paragraph (c) requires the public entity to make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation.

Where structural modifications are required, paragraph (d) requires that a transition plan be developed by an entity that employs 50 or more persons, within six months of the effective date of this regulation. Paragraph (d)(3) provides that, if a public entity has already completed a transition plan required by a regulation implementing section 504, the transition plan required by this part will apply only to those policies and practices that were not covered by the previous transition plan.

Aside from structural changes, all other necessary steps to achieve compliance with this part shall be taken within sixty days. Of course, this section does not reduce or eliminate any obligations that are already applicable to a public entity under section 504.

Section 35.151 New Construction and Alterations

Section 35.151 provides that those buildings that are constructed or altered by, on behalf of, or for the use of a public entity, after the effective date of this part, shall be designed, constructed, or altered to be readily accessible to and usable by individuals with disabilities. Design, construction, or alteration of facilities in conformance with the Uniform Federal Accessibility Standards (UFAS) shall be deemed to comply with the requirements of this section with respect to those facilities. Departures from particular requirements of those standards by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

The Department proposes to adopt UFAS as the interim accessibility standard under this rule because it is the standard now referenced by the regulations implementing section 504 of the Rehabilitation Act promulgated by most Federal funding agencies. It is, therefore, familiar to the State and local government entities subject to this rule. However, it should be noted that section 504 of the ADA requires the Architectural and Transportation Barriers Compliance Board (Board) to issue supplemental Minimum Guidelines and Requirements for Accessible Design of buildings and facilities subject to the Act. Section 204(c) of the ADA provides that the Attorney General shall promulgate regulations implementing title II that are consistent with the Board's ADA guidelines. The Department anticipates that after the Board's title II guidelines have been published, this rule will be amended to adopt those guidelines as the accessibility standards.

Existing buildings leased by the public entity after the effective date of this part are not required by the regulation to meet accessibility standards simply by virtue of being leased. They are subject, however, to the program accessibility standard for existing facilities in § 35.150. To the extent the buildings are newly constructed or altered, they must also meet the new construction and alteration requirements of § 35.151.

Federal practice under section 504 has always treated newly leased buildings as subject to the existing facility program accessibility standard. Unlike the construction of new buildings where architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility, and the same program accessibility standard should apply to both owned and leased existing buildings.

On the other hand, the more accessible the leased space is, the fewer structural modifications will be required in the future for particular employees whose disabilities may necessitate barrier removal as a reasonable accommodation. Pursuant to the requirements for leased buildings contained in the Minimum Guidelines and Requirements for Accessible Design published under the Architectural Barriers Act by the Architectural and Transportation Barriers Compliance Board, 36 CFR 1190.34, the Federal Government may not lease a building unless it contains (1) one accessible route from an accessible entrance to those areas in which the principal activities for which the building is leased are conducted, (2) accessible toilet facilities, and (3) accessible parking facilities, if a parking area is included within the lease (36 CFR 1190.34). Although these requirements are not applicable to buildings leased by public entities covered by this regulation, such entities are encouraged to look for the most accessible space available to lease and to attempt to find space complying at least with these minimum Federal requirements.

Section 35.151(d) gives effect to the intent of Congress, expressed in section 504(c) of the Act, that this part recognize that the national interest in preserving significant historic structures warrants deference to statutory restrictions placed on alterations to historic facilities by Federal, State, and local statutes. Therefore, paragraph (d)(1) of § 35.151 provides that in making alterations to facilities that are subject to Federal, State, or local statutes requiring historic preservation of the facility, priority shall be given to methods that provide physical access to individuals with disabilities, but paragraph (d)(2) provides that if it is not possible to provide physical access to an historic property without substantially impairing the historic features of the facility, then alternative methods of accessibility shall be provided pursuant to the requirements of § 35.150.

Subpart E—Communications

Section 35.160 General

Section 35.160 requires the public entity to take such steps as may be necessary to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.

Paragraph (b) requires the public entity to furnish appropriate auxiliary aids when necessary to afford an individual with disabilities an equal opportunity to participate in, and enjoy the benefits of, the public entity's service, program, or activity. The public

entity must provide an opportunity for individuals with disabilities to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the public entity (§ 35.160(b)(1)). The public entity shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 35.164.

Section 35.160 (b)(2) provides that the public entity need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature. For example, the public entity need not provide eyeglasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the public entity to provide wheelchairs to persons with mobility impairments.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (*e.g.*, a meeting) or where the hearing-impaired applicant or participant is not skilled in spoken or written language. In these cases, a sign language interpreter may be appropriate.

Section 35.161 Telecommunication Devices for the Deaf (TDD's)

Section 35.161 requires that, where a public entity communicates with applicants and beneficiaries by telephone, TDD's or equally effective telecommunication systems be used to communicate with individuals with impaired speech or hearing.

Many persons with impaired speech or hearing are unable to communicate effectively using telephone voice transmissions. Title IV of the ADA addresses this problem by requiring establishment of telecommunications relay services to permit individuals using Telecommunication Devices for the Deaf (TDD's) to communicate with people using voice telephones. A TDD is a device that converts letters typed on a keyboard into tones that are transmitted over standard telephone circuits to another TDD at the receiving end which, in turn, converts them back to letters that are printed or displayed on a screen. When both the caller and the person being called have compatible TDD's, they are able to communicate directly without any voice transmission. Problems arise when an individual who does not have a TDD needs to communicate with an individual who uses a TDD. The relay services required by title IV would involve a relay operator using both a voice telephone and a TDD to type the voice messages to the TDD user and speak the TDD messages to the voice user.

Section 204(b) of the ADA requires that the regulation implementing title II with respect to communications be consistent with the Department of Justice's regulation implementing section 504 for its federally conducted programs and activities at 28 CFR part 39. Section 35.161 is taken from paragraph (a)(2) of § 39.160 of the Justice federally conducted regulation, which requires use of TDD's or equally effective telecommunication systems for communication with people who are unable to use the Department's voice telephone system. Of course, where relay services, such as those required by title IV of the ADA are available, a public entity may use those services to meet the requirements of this section.

Section 35.162 Telephone Emergency Services

Many public entities provide telephone emergency services by which individual's can seek immediate assistance from police, fire, ambulance, and other emergency services. These telephone emergency services—including "911" services—are clearly a vital public service whose reliability can be a matter of life or death. The legislative history of title II specifically reflects congressional intent that public entities must ensure that telephone emergency services, including 911 services, be accessible to persons with impaired hearing and speech through telecommunications technology. Conference report at 67–68; Education and Labor report at 84–85.

Telecommunications technology makes it feasible for public entities to provide direct access to telephone emergency systems for persons with speech or hearing impairments who use telecommunications devices for the deaf (TDD's). TDD's use either the Baudot format or the American Standard Code for Information Interchange (ASCII) format to make telephone calls. Computer modems generally use the ASCII format. The House and Senate conferees intended that, to be accessible, telephone emergency services must be able to use both Baudot and ASCII codes for telecommunications. Conference report at 68.

Section 35.162 mandates that public entities that provide emergency telephone services provide services to persons with disabilities that are functionally equivalent to the services provided to others. The section is drafted to reflect the congressional intent embodied in the legislative history of the ADA. Public entities must equip their telephone emergency services with technology that provides persons with disabilities with services that are "functionally equivalent" to voice services offered to non-disabled persons. See 136 Cong. Rec. H2431 (daily ed. May 17, 1990) (statement of Rep. Gunderson).

The requirement for accessible telephone emergency services should not have the effect of freezing technology or thwarting the introduction of superior or more efficient technology. Telecommunications technology to be required refers not only to "installation of a TDD or compatible ASCII or Baudot computer modems by programs operating these services," but also to "future technological advances—such as speech to text services." Education and Labor report at 85.

Section 35.163 Information and Signage

Section 35.163 requires the public entity to provide information to individuals with disabilities concerning accessible services, activities, and facilities. Paragraph (b) requires the public entity to provide signage at all inaccessible entrances to each of its facilities that directs users to an accessible entrance or to a location with information about accessible facilities.

Section 35.164 Duties

Section 35.164, like paragraph (a)(3) of § 35.150, is taken from the section 504 regulations for federally conducted programs. Like paragraph (a)(3), it limits the obligation of the public entity to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it. It also includes specific requirements for determining the existence of undue financial and administrative burdens. The preamble discussion of § 35.150(a) regarding that determination also applies to this section and should be referred to for a complete understanding of the public entity's obligation to comply with §§ 35.160–35.164. Because of the essential nature of the services provided by telephone emergency systems, the Department anticipates that § 35.164 will rarely be applied to § 35.162.

Subpart F—Compliance Procedures

Subpart F sets out the procedures for administrative enforcement of this part. Section 203 of the Act provides that the remedies, procedures, and rights set

forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) for enforcement of section 504 of the Rehabilitation Act, which prohibits discrimination on the basis of handicap in programs and activities that receive Federal financial assistance, shall be the remedies, procedures, and rights for enforcement of title II. Section 505, in turn, incorporates by reference the remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d to 2000d–4a). Title VI, which prohibits discrimination on the basis of race, color, or national origin in federally assisted programs, is administratively enforced by the Federal agencies that provide the Federal financial assistance to the covered programs and activities in question, and the primary enforcement sanction is the termination of Federal funds to a program that is found to discriminate.

Title II of the ADA extended the requirements of section 504 to all services, programs, and activities of State and local governments, not only those that receive Federal financial assistance. The House Committee on Education and Labor explained the enforcement provisions as follows:

> It is the Committee's intent that administrative enforcement of section 202 of the legislation should closely parallel the Federal government's experience with section 504 of the Rehabilitation Act of 1973. The Attorney General should use section 504 enforcement procedures and the Department's coordination role under Executive Order 12250 as models for regulation in this area.
>
> The Committee envisions that the Department of Justice will identify appropriate Federal agencies to oversee compliance activities for State and local governments. As with section 504, these Federal agencies, including the Department of Justice, will receive, investigate, and where possible, resolve complaints of discrimination. If a Federal agency is unable to resolve a complaint by voluntary means, . . . the major enforcement sanction for the Federal government will be referral of cases by these Federal agencies to the Department of Justice.
>
> The Department of Justice may then proceed to file suits in Federal district court. As with section 504, there is also a private right of action for persons with disabilities, which includes the full panoply of remedies. Again, consistent with section 504, it is not the Committee's intent that persons with disabilities need to exhaust Federal administrative remedies before exercising their private right of action.

Education & Labor report at 98. See also Senate report at 57–58.

Subpart F effectuates the congressional intent by deferring to section 504 procedures where those procedures are applicable, that is, where a Federal agency has jurisdiction under section 504 by virtue of its provision of Federal financial assistance to the program or activity in which the discrimination is alleged to have occurred. Deferral to the 504 procedures also makes the sanction of fund termination available where necessary to achieve compliance. Because the Civil Rights Restoration Act (Pub. L. 100–259) extended the application of section 504 to all of the operations of the public entity receiving the Federal financial assistance, many activities of State and local governments are already covered by section 504. The procedures in subpart F apply to complaints concerning services, programs, and activities of public entities that are covered by the ADA.

Subpart G designates the Federal agencies responsible for enforcing the ADA with respect to specific components of State and local government. It does not, however, displace existing jurisdiction under section 504 of the various funding agencies. Individuals may still file discrimination complaints against recipients of Federal financial assistance with the agencies that provide that assistance, and the funding agencies will continue to process those complaints under their existing procedures for enforcing section 504. Subpart F establishes the procedures to be followed by the agencies designated in subpart G for processing complaints against State and local government entities that do not receive Federal funds.

Section 35.170 Complaints

Section 35.170 provides that any individual who believes that he or she or a specific class of individuals has been subjected to discrimination on the basis of disability by a public entity may, by himself or herself or by an authorized representative, file a complaint under this part within 180 days of the date of the alleged discrimination, unless the time for filing is extended by the agency for good cause. Filing the complaint with any Federal agency will satisfy the requirement for timely filing. As explained below, a complaint filed with an agency that has jurisdiction under section 504 will be processed under the agency's procedures for enforcing section 504.

Section 35.171 Acceptance of Complaints

Section 35.171 establishes procedures for determining jurisdiction and responsibility for processing complaints against public entities. The Department is proposing to provide complainants an opportunity to file with the Federal funding agency of their choice. If that agency does not have jurisdiction under section 504, however, and is not the agency designated under subpart G as responsible for that public entity, the agency must refer the complaint to the appropriate designated agency. Whenever the appropriate designated agency receives a complaint, it will process the complaint under section 504, if it has jurisdiction under section 504, or, if it does not have jurisdiction under section 504, it will treat the complaint as an ADA complaint under the procedures established in this subpart. Section 35.171 also contains procedures for coordinating the processing of employment complaints with the EEOC.

Section 35.172 Resolution of Complaints

Section 35.172 requires the designated agency to either resolve the complaint or issue to the complainant and the recipient a Letter of Findings containing findings of fact and conclusions of law and a description of a remedy for each violation found.

The Act requires the Department of Justice to establish administrative procedures for resolution of complaints, but does not require complainants to exhaust these administrative remedies. The Committee Reports make clear that Congress intended to provide a private right of action with the full panoply of remedies for individual victims of discrimination. Thus, as explained in paragraph (b) of § 35.172, the complainant may elect to pursue a private suit if the designated agency does not find a violation. If the agency does find a violation, the complainant may still file a private suit, or the procedures in §§ 35.173 and 35.174 shall be followed. The complainant may also elect to proceed with a private suit at any time, because the Act provides a private right of action and does not require exhaustion of administrative remedies.

Section 35.173 Voluntary Compliance Agreements

Section 35.173 requires the agency to attempt to resolve all complaints in which it finds noncompliance through voluntary compliance agreements enforceable by the Attorney General.

Section 35.174 Referral

Section 35.174 provides for referral of the matter to the Department of Justice if the agency is unable to obtain voluntary compliance.

Section 35.175 Attorney's Fees

Section 35.175 states that courts are authorized to award attorney's fees, as provided in section 505 of the Act.

Section 35.176 Alternative Means of Dispute Resolution

Section 35.176 restates section 513 of the Act, which encourages use of alternative means of dispute resolution.

Section 35.177 Effect of Unavailability of Technical Assistance

Section 35.177 explains that, as provided in section 506(e) of the Act, a public entity is not excused from compliance with the requirements of this part because of any failure to receive technical assistance.

Section 35.178 State Immunity

Section 35.178 restates the provision of section 502 of the Act that a State is not immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court for violations of the Act, and that the same remedies are available for any such violations as are available in an action against an entity other than a State.

Subpart G—Designated Agencies

Section 35.190 Designated Agencies

Subpart G designates the Federal agencies responsible for investigating complaints under this part. At least 26 agencies currently administer programs of Federal financial assistance that are subject to the nondiscrimination requirements of section 504 as well as other civil rights statutes. A majority of these agencies administer modest programs of Federal financial assistance and/or devote minimal resources exclusively to "external" civil rights enforcement activities. Under Executive Order 12250, the Department of Justice has encouraged the use of delegation agreements under which certain civil rights compliance responsibilities for a class of recipients funded by more than one agency are delegated by an agency or agencies to a "lead" agency. For example, many agencies that fund institutions of higher education have signed agreements that designate the Department of Education as the "lead" agency for this class of recipients.

The use of delegation agreements reduces overlap and duplication of effort, and thereby strengthens overall civil rights enforcement. However, the use of these agreements to date generally has been limited to education and health care recipients. These classes of recipients are funded by numerous agencies and the logical connection to a lead agency is clear (e.g., the Department of Education for colleges and universities, and the Department of Health and Human Services for hospitals).

The ADA's expanded coverage of State and local government operations further complicates the process of establishing Federal agency jurisdiction for the purpose of investigating complaints of discrimination on the basis of disability. Because all operations of public entities now are covered, irrespective of the presence or absence of Federal financial assistance, many additional State and local government functions and organizations now are subject to Federal jurisdiction. In some cases, there is no historical or single clear-cut subject matter relationship with a Federal agency as was the case in the education example described above. Further, the 33,000 governmental jurisdictions subject to the ADA differ greatly in their organization, making a detailed and workable division of Federal agency jurisdiction by individual State, county, or municipal entity unrealistic.

The Department of Justice proposes to apply the delegation concept to the investigation of complaints of discrimination on the basis of disability by public entities under the ADA. The Department of Justice proposes to designate nine agencies, rather than all agencies currently administering programs of Federal financial assistance, as responsible for investigating complaints under this part. These "designated agencies" generally have the largest civil rights compliance staffs, the most experience in complaint investigations and disability issues, and broad yet clear subject area responsibilities. The proposed division of responsibilities is made functionally rather than by public entity type or name designation. For example, under this proposal all entities (regardless of their title) that exercise responsibilities, regulate, or administer services or programs relating to lands and natural resources would fall within the jurisdiction of the Department of Interior.

It is anticipated that complaints under this part will be investigated by the designated agency most closely related to the functions exercised by the governmental component against which the complaint is lodged. For example, a complaint against a State real estate commission or a local housing code enforcement division, where such a commission or division is a recognizable entity, would be investigated by the Department of Housing and Urban Development (the designated agency for real estate industry and housing code enforcement functions), even though both entities were part of a general umbrella department of planning and regulation (for which the Department of Justice is the designated agency). If two or more agencies have apparent responsibility over a complaint, the Assistant Attorney General shall determine which one of the agencies shall be the designated agency for purposes of that complaint.

This proposal also assigns the Department of Justice as the designated agency responsible for all State and local government functions not assigned to other designated agencies. The Department of Justice, under an agreement with the Department of the Treasury, continues to receive and coordinate the investigation of complaints filed under the Revenue Sharing Act. This entitlement program, which was terminated in 1986, provided civil rights compliance jurisdiction for a wide variety of complaints regarding the use of Federal funds to support various general activities of local governments. In the absence of any similar program of Federal financial assistance administered by another Federal agency, placement of designated agency responsibilities for miscellaneous and otherwise undesignated functions with the Department of Justice is proposed as an appropriate continuation of current practice.

The Department of Justice seeks comments on the proposed listing of designated agencies and their areas of responsibility. Suggestions and alternatives are welcomed to improve the proposed complaint investigation procedures.

Regulatory Process Matters

This notice of proposed rulemaking has been reviewed by the Office of Management and Budget under Executive Order 12291. The Department has determined that it is not a major rule for purposes of that executive order. The Department has nonetheless prepared a preliminary regulatory impact analysis (RIA) of this rule and will provide copies of this document to the public on request. The Department encourages comment on this RIA as well as the submission of any data that would assist the Department in estimating the costs and benefits of the proposed rule.

The Department has determined that this proposed rule will not have a significant economic impact on a substantial number of small business entities. Therefore, it is not subject to the Regulatory Flexibility Act.

The Department is preparing a statement of the federalism impact of the proposed rule under Executive Order 12612 and will provide copies of this statement on request.

The reporting and recordkeeping requirements described in the proposed rule are considered to be information collection requirements as that term is defined by the Office of Management and Budget in 5 CFR part 1320. Accordingly, those proposed information collection requirements are being submitted to OMB for review pursuant to the Paperwork Reduction Act. Comments on the proposed information collection requirements should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503. Attention: Desk Officer for the Department of Justice. The Department requests that comments sent to OMB also be sent to the rulemaking docket for this proposed action, at the address given in the **"ADDRESSES"** section of this notice.

List of Subjects in 28 CFR Part 35

Administrative practice and procedure, Alcoholism, Americans with disabilities, Buildings, Civil rights, Drug abuse, Handicapped, Historic preservation, Intergovernmental relations, Reporting and recordkeeping requirements.

By the authority vested in me as Attorney General by 28 U.S.C. 509, 510, 5 U.S.C. 301, and section 204 of the Americans with Disabilities Act, and for the reasons set forth in the preamble, chapter I of title 28 of the Code of Federal Regulations is proposed to be amended by adding a new part 35 to read as follows:

PART 35—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES

Subpart A—General

Sec.

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35.102 Application.
35.103 Relationship to other laws.
35.104 Definitions.
35.105 Self-evaluation.
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35.107 Designation of responsible employee and adoption of grievance procedures.
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Subpart B—General Requirements

35.130 General prohibitions against discrimination.
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Subpart C—Employment

35.140 Employment discrimination prohibited.
35.141–35.148 [Reserved]

Subpart D—Program Accessibility

35.149 Discrimination prohibited.
35.150 Existing facilities.
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Subpart E—Communications

35.160 General.
35.161 Telecommunication devices for the deaf (TDD's).
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35.170 Complaints.
35.171 Acceptance of complaints.
35.172 Resolution of complaints.
35.173 Voluntary compliance agreements.
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35.175 Attorney's fees.
35.176 Alternative means of dispute resolution.
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35.178 State immunity.
35.179–35.189 [Reserved]

Subpart G—Designated Agencies

35.190 Designated agencies.
35.191–35.999 [Reserved]

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; title II, pub. L. 101–336 (42 U.S.C. 12134).

Subpart A—General

§ 35.101 Purpose.

The purpose of this part is to effectuate subtitle A of title II of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability by public entities.

§ 35.102 Application.

(a) Except as provided in paragraph (b) of this section, this part applies to all services, programs, and activities provided or made available by public entities.

(b) Public transportation services, programs, and activities of public entities are covered by regulations implementing subtitle B of title II of the ADA issued by the Department of Transportation at 49 CFR part 37. The specific provisions of the Department of Transportation's regulation, including the limitations on those provisions, control over the general provisions in this part in circumstances where both specific and general provisions apply.

§ 35.103 Relationship to other laws.

This part does not invalidate or limit the remedies, rights, and procedures of any Federal laws, or State or local laws (including State common law), that provide greater or equal protection for the rights of individuals with disabilities.

§ 35.104 Definitions.

For purposes of this part, the term—

Act means the Americans with Disabilities Act (Pub. L. 101–336, 104 Stat. 327, 42 U.S.C. 12101–12213 and 47 U.S.C. 225 and 611).

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids and services includes—

(1) Qualified interpreters, notetakers, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, television decoders, telecommunication devices for deaf persons (TDD's), or other effective methods of making orally delivered materials available to individuals with hearing impairments;

(2) Qualified readers, taped texts, audio recordings, Brailled materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(3) Acquisition or modification of equipment or devices; and

(4) Other similar services and actions.

Complete complaint means a written statement that contains the complainant's name and address and describes the public entity's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of this part. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Current illegal use of drugs means illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem.

Designated agency means the Federal agency designated under subpart G of this part to oversee compliance activities under this part for particular components of State and local governments.

Disability means, with respect to an individual, a permanent or temporary physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

(1)(i) The phrase *physical or mental impairment* means—

(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine;

(B) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) The phrase *physical or mental impairment* includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease, tuberculosis, drug addiction, and alcoholism.

(iii) The phrase *physical or mental impairment* does not include homosexuality or bisexuality.

(2) The phrase *major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) The phrase *has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) The phrase *is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a public entity as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by a public entity as having such an impairment.

(5) The term *disability* does not include—

(i) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(ii) Compulsive gambling, kleptomania, or pyromania; or

(iii) Psychoactive substance use disorders resulting from current illegal use of drugs.

Drug means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

Facility means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.

Illegal use of drugs means the use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). The term *illegal use of drugs* does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

Individual with a disability means a person who has a disability. The term *individual with a disability* does not include an individual who is currently engaging in the illegal use of drugs, when the public entity acts on the basis of such use.

Public entity means—

(1) Any State or local government;

(2) Any department, agency, special purpose district, or other instrumentality of a State or States or local government; and

(3) The National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act).

Qualified individual with a disability means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

State means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

§ 35.105 Self-evaluation.

(a) A public entity shall, within one year of the effective date of this part, evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of this part and, to the extent modification of any such services, policies, and practices is required, the public entity shall proceed to make the necessary modifications.

(b) A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments.

(c) A public entity that employs 50 or more persons shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A list of the interested persons consulted;

(2) A description of areas examined and any problems identified; and

(3) A description of any modifications made.

(d) If a public entity has already complied with the self-evaluation requirement of a regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this section shall apply only to those policies and practices that were not included in the previous self-evaluation.

§ 35.106 Notice.

A public entity shall make available to applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the services, programs, or activities of the public entity, and make such information available to them in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

§ 35.107 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph.

(b) *Complaint procedure.* A public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and

equitable resolution of complaints alleging any action that would be prohibited by this part.

§§ 35.108–35.129 [Reserved]

Subpart B—General Requirements

§ 35.130 General prohibitions against discrimination.

(a) No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

(b)(1) A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity's program;

(vi) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;

(vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) A public entity may not deny a qualified individual with a disability the opportunity to participate in services, programs, or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) A public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

(i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;

(ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities; or

(iii) That perpetuate the discrimination of another public entity if both public entities are subject to common administrative control or are agencies of the same State.

(4) A public entity may not, in determining the site or location of a facility, make selections—

(i) That have the effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination; or

(ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the service, program, or activity with respect to individuals with disabilities.

(5) A public entity, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

(6) A public entity may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may a public entity establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability The programs or activities of entities that are licensed or certified by a public entity are not, themselves, covered by this part.

(7) A public entity shall make reasonable modifications in policies, practices, or procedures where necessary to avoid discrimination on the basis of disability.

(c) Nothing in this part prohibits a public entity from providing benefits, services, or advantages to individuals with disabilities, or to a particular class of individuals with disabilities beyond those required by this part.

(d) A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(e) Nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not to accept.

(f) A public entity may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.

§ 35.131 Illegal use of drugs.

(a) *General.* (1) Except as provided in paragraph (b) of this section, this part does not prohibit discrimination against an individual based on that individual's current illegal use of drugs.

(2) A public entity shall not discriminate on the basis of illegal use of drugs against an individual who is not engaging in current illegal use of drugs and who—

(i) Has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully;

(ii) Is participating in a supervised rehabilitation program; or

(iii) Is erroneously regarded as engaging in such use.

(b) *Health and drug rehabilitation services.* A public entity shall not deny health services or services provided in connection with drug rehabilitation to an individual on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services.

(c) *Drug testing.* (1) This part does not prohibit a public entity from adopting or administering reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual who formerly engaged in the illegal use of drugs is not now engaging in current illegal use of drugs.

(2) Nothing in paragraph (c) of this section shall be construed to encourage, prohibit, restrict, or authorize the conduct of testing for the illegal use of drugs.

§ 35.132 Smoking.

This part does not preclude the prohibition of, or the imposition of restrictions on, smoking in transportation covered by this part.

§ 35.133 Maintenance of accessible features.

A public entity shall maintain in operable working condition those

features of facilities and equipment that are required by the Act or this part to be readily accessible to and usable by persons with disabilities.

§ 35.134 Retaliation or coercion.

(a) No private or public entity shall discriminate against any individual because that individual has opposed any act or practice made unlawful by this part, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the Act or this part.

(b) No private or public entity shall coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by the Act or this part.

§§ 35.135-35.139 [Reserved]

Subpart C—Employment

§ 35.140 Employment discrimination prohibited.

No qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in employment under any service, program, or activity conducted by a public entity. The definitions, requirements, and procedures of title I of the Act, as established by the Equal Employment Opportunity Commission in 29 CFR part 1630, shall apply to employment in any service, program, or activity conducted by a public entity.

§§ 35.141-35.148 [Reserved]

Subpart D—Program Accessibility

§ 35.149 Discrimination prohibited.

Except as otherwise provided in § 35.150, no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

§ 35.150 Existing facilities.

(a) *General.* A public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not—

(1) Necessarily require a public entity to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2) In the case of historic preservation programs, require a public entity to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with § 35.150(a) of this part would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.

(b) *Methods*—(1) *General.* A public entity may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock or other conveyances, or any other methods that result in making its services, programs, or activities readily accessible to and usable by individuals with disabilities. A public entity is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. A public entity, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Uniform Federal Accessibility Standards. In choosing among available methods for meeting the requirements of this section, a public entity shall give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § 35.150(a) of this part in historic preservation programs, a public entity shall give priority to methods that provide physical access to individuals with disabilities. In cases where a physical alteration to an historic property is not required because of paragraphs (a)(2) or (a)(3) of this section, alternative methods of achieving program accessibility include —

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with disabilities into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* A public entity shall comply with the obligations established under this section within sixty days of the effective date of this regulation, except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this regulation, but in any event as expeditiously as possible.

(d) *Transition plan.* (1) In the event that structural changes to facilities will be undertaken to achieve program accessibility, a public entity that employs 50 or more persons shall develop, within six months of the effective date of this regulation, a transition plan setting forth the steps necessary to complete such changes. A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments. A copy of the transition plan shall be made available for public inspection.

(2) The plan shall, at a minimum—

(i) Identify physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities;

(ii) Describe in detail the methods that will be used to make the facilities accessible;

(iii) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(iv) Indicate the official responsible for implementation of the plan.

(3) If a public entity has already complied with the transition plan requirement of a Federal agency regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this paragraph shall apply only to those policies and practices that were not included in the previous transition plan.

§ 35.151 New construction and alterations.

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after the effective date of this part.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a public entity after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities.

(c) *Accessibility standards.* Design, construction, or alteration of facilities in conformance with the Uniform Federal Accessibility Standards (Appendix A to 41 CFR part 101–19, subpart 101–19.6) shall be deemed to comply with the requirements of this section with respect to those facilities. Departures from particular requirements of those standards by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

(d) *Alterations: Historic preservation.* (1) In making alterations to facilities that are subject to Federal, State, or local statutes requiring historic preservation of the facility, priority shall be given to methods that provide physical access to individuals with disabilities.

(2) If it is not possible to provide physical access to an historic property without substantially impairing the historic features of the facility, alternative methods of accessibility shall be provided pursuant to the requirements of § 35.150.

§§ 35.152–35.159 [Reserved]

Subpart E—Communications

§ 35.160 General.

(a) A public entity shall take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.

(b) A public entity shall furnish appropriate auxiliary aids where necessary to afford an individual with disabilities an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity.

(1) In determining what type of auxiliary aid is necessary, a public entity shall give primary consideration to the requests of the individual with disabilities.

(2) A public entity need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

§ 35.161 Telecommunication devices for the deaf (TDD's).

Where a public entity communicates with applicants and beneficiaries by telephone, TDD's or equally effective telecommunication systems shall be used to communicate with individuals with impaired hearing or speech.

§ 35.162 Telephone emergency services.

Telephone emergency services, including 911 services, must provide to individuals who use TDD's or computer modems access that is functionally equivalent to that provided to other telephone users. The services must be provided in all commonly used formats, such as Baudot and ASCII, that are compatible with these devices.

§ 35.163 Information and signage.

(a) A public entity shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(b) A public entity shall provide signage at all inaccessible entrances to each of its facilities, directing users to an accessible entrance or to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each accessible entrance of a facility.

§ 35.164 Duties.

This subpart does not require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with this subpart would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of the public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this subpart would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the public entity.

§§ 35.165–35.168 [Reserved]

Subpart F—Compliance Procedures

§ 35.170 Complaints.

(a) *Who may file.* An individual who believes that he or she or a specific class of individuals has been subjected to discrimination on the basis of disability by a public entity may, by himself or herself or by an authorized representative, file a complaint under this part.

(b) *Time for filing.* A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the designated agency for good cause shown. A complaint is deemed to be filed under this section on the date it is first filed with any Federal agency.

§ 35.171 Acceptance of complaints.

(a) *Designated agency.* Any Federal agency that receives a complaint of discrimination on the basis of disability by a public entity shall determine under subpart G of this part whether it is the designated agency responsible for complaints filed against that public entity.

(1) If the agency determines that it is not the designated agency, it shall promptly review the complaint to determine whether it has jurisdiction over the complaint under section 504.

(i) If the agency has section 504 jurisdiction, it shall process the complaint according to its procedures for enforcing section 504.

(ii) If the agency does not have section 504 jurisdiction, it shall promptly notify the complainant that it is referring the complaint to the appropriate agency designated in subpart G of this part.

(2) If the agency determines that it is the designated agency under subpart G of this part, it shall promptly review the complaint to determine whether it has jurisdiction under section 504.

(i) If the designated agency has section 504 jurisdiction, it shall process the complaint according to its procedures for enforcing section 504.

(ii) If the designated agency does not have section 504 jurisdiction, it shall process the complaint according to the procedures established by this subpart.

(b) *Employment complaints.* (1) Complaints alleging employment discrimination subject to both section 504 and this part shall be processed in accordance with procedures established in the coordination regulation issued by the Department of Justice and the Equal Employment Opportunity Commission under section 107(b) of the Act.

(2) Complaints alleging employment discrimination subject to this part, but not to section 504, shall be referred to the Equal Employment Opportunity Commission for processing under the definitions, requirements, and procedures of title I of the Act, 29 CFR part 1630.

(c) *Complete complaints.* (1) A designated agency shall accept all complete complaints under this section and shall promptly notify the complainant and the public entity of the receipt and acceptance of the complaint.

(2) If the designated agency receives a complaint that is not complete, it shall notify the complainant and specify the additional information that is needed to make the complaint a complete complaint. If the complainant fails to complete the complaint, the designated agency shall close the complaint without prejudice.

§ 35.172 Resolution of complaints.

(a) The designated agency shall investigate each complete complaint, attempt informal resolution, and, if resolution is not achieved, issue to the complainant and the public entity a Letter of Findings that shall include—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) Notice of the rights available under paragraph (b) of this section.

(b) If the designated agency finds no violation, the complainant may file a private suit pursuant to section 203 of the Act. If the designated agency finds noncompliance, the procedures in §§ 35.173 and 35.174 shall be followed. At any time, the complainant may file a private suit pursuant to section 203 of the Act.

§ 35.173 Voluntary compliance agreements.

(a) When the designated agency issues a noncompliance Letter of Findings, the designated agency shall—

(1) Notify the Assistant Attorney General by forwarding a copy of the Letter of Findings to the Assistant Attorney General; and

(2) Initiate negotiations with the public entity to secure compliance by voluntary means.

(b) Where the designated agency is able to secure voluntary compliance, the voluntary compliance agreement shall—

(1) Be in writing and signed by the parties;

(2) Address each cited violation;

(3) Specify the corrective or remedial action to be taken, within a stated period of time, to come into compliance;

(4) Provide assurance that discrimination will not recur; and

(5) Provide for enforcement by the Attorney General.

§ 35.174 Referral.

If the public entity declines to enter into voluntary compliance negotiations or if negotiations are unsuccessful, the designated agency shall refer the matter to the Attorney General with a recommendation for appropriate action.

§ 35.175 Attorney's fees.

In any action or administrative proceeding commenced pursuant to the Act or this part, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

§ 35.176 Alternative means of dispute resolution.

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under the Act and this part.

§ 35.177 Effect of unavailability of technical assistance.

A public entity shall not be excused from compliance with the requirements of this part because of any failure to receive technical assistance, including any failure in the development or dissemination of any technical assistance manual authorized by the Act.

§ 35.178 State immunity.

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

§§ 35.179–35.189 [Reserved]

Subpart G—Designated Agencies

§ 35.190 Designated agencies.

(a) The Assistant Attorney General shall coordinate compliance activities for State and local government components.

(b) The Federal agencies listed in paragraphs (b) (1) through (9) of this section shall have responsibility for the implementation of subpart F of this part for components of State and local governments that exercise responsibilities, regulate, or administer services, programs, or activities in the following functional areas.

(1) *Department of Agriculture:* All programs, services, and regulatory activities relating to farming and the raising of livestock, including extension services.

(2) *Department of Commerce:* All programs, services, and regulatory activities relating to the development and operation of commerce and industry, including general economic development, banking and finance, consumer protection, insurance, and small business.

(3) *Department of Education:* All programs, services, and regulatory activities relating to the operation of preschool and daycare programs, elementary and secondary education systems and institutions, institutions of higher education and vocational education (other than medical and nursing schools), museums and libraries, the arts and humanities, and historic and cultural preservation.

(4) *Department of Health and Human Services:* All programs, services, and regulatory activities relating to the provision of health care and social services including medical and nursing schools, and the operation of health care and social service providers and institutions, including "grass-roots" and community services organizations and programs.

(5) *Department of Housing and Urban Development:* All programs, services and regulatory activities relating to state and local public housing, housing assistance and referral, rent control, the real estate industry, and housing code administration.

(6) *Department of Interior:* All programs, services, and regulatory activities relating to lands and natural resources, including parks and recreation, water and waste management, environmental protection, and energy.

(7) *Department of Justice:* All programs, services, and regulatory activities relating to public safety and the administration of justice, including courts; planning, development, and regulation (unless assigned to other designated agencies); state and local government support services (e. g., audit, personnel, comptroller, administrative services); all other government' functions not assigned to other designated agencies.

(8) *Department of Labor:* All programs, services, and regulatory activities relating to labor and the work force.

(9) *Department of Transportation:* All programs, services, and regulatory activities relating to transportation, including highways, public transportation, traffic management (non-law enforcement), automobile licensing and inspection, and driver licensing.

(c) If two or more agencies have apparent responsibility over a complaint, the Assistant Attorney General shall determine which one of the agencies shall be the designated agency for purposes of that complaint.

§§ 35.191–35.999 [Reserved]

Dated: February 20, 1991.

Dick Thornburgh,

Attorney General.

[FR Doc. 91–4384 Filed 2–27–91; 8:45 am]

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Thursday
February 28, 1991

Part V

Department of the Interior

Office of the Secretary

Wetlands Task Force Meetings and Written Comments—Summary; Notice of Availability

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Wetlands Task Force Meetings and Written Comments—Summary

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of Availability.

SUMMARY: The Domestic Policy Council's Task Force on Wetlands announced in the July 25, 1990 Federal Register (55 FR 30279–80), a series of public meetings and requested comments regarding strategies for working toward a national goal of "no net loss" of wetlands. The Task Force held six meetings between August 17, 1990, and September 17, 1990. Public comments were received between July 25, 1990 and September 28, 1990. A summary of the results of the public meetings and responses received by the Domestic Policy Council Task Force follows.

ADDRESSES: The complete file of public meeting transcripts, written testimony, and written responses received by mail is available for inspection, by appointment, during normal business hours (7:45 am to 4:15 pm) at the U.S. Department of the Interior, Fish and Wildlife Service, Division of Habitat Conservation, room 400, 4401 N. Fairfax Drive, Arlington, Virginia, 22203. Copies of this summary document are also available through the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Please identify the document by the title "Domestic Policy Council's Task Force on Wetlands—Summary of Public Meetings and Written Comments" and the assigned document number PB 91–144113. If requesting a paper copy, use the code number A05; for microfiche copies, use the code number A01. The Sales desk number for the National Technical Information Service is (703) 487–4650. The FAX number for sales is (703) 321–8547. A three dollar handling fee applies for each order.

FOR FURTHER INFORMATION CONTACT: William E. Knapp, Chief of the Division of Habitat Conservation, Fish and Wildlife Service, U.S. Department of the Interior, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: In an address before the Ducks Unlimited Sixth International Waterfowl Symposium in 1989, President Bush identified the goal of "no net loss" of wetlands as a major element of his Administration's environmental program. The President directed the Domestic Policy Council's Task Force on Wetlands to solicit and receive comments and public input on strategies for working toward a national goal of "no net loss" of wetlands. The Task Force includes representatives from The White House Offices of Cabinet Affairs, Policy Development, and Management and Budget; the Departments of Agriculture, Commerce, Defense, Energy, Housing and Urban Development, Interior, Justice, and Transportation; the Environmental Protection Agency; and the Council of Environmental Quality.

In order to obtain public comment and input regarding the "no net loss" goal, the Task Force announced a series of public meetings and requested written comments in the Federal Register (55 FR 30279–80). Among the policy issues the Task Force identified as topics for public comment were: (1) Possible revisions to Executive Order 11990 on the "Protection of Wetlands," and (2) the roles of Federal, State and local governments in developing and using regulatory and non-regulatory tools, including market-based incentives, to achieve "no net loss" of wetlands. The Task Force encouraged participants at the public meetings and those making written comments to focus their remarks on ways to pursue the goal of "no net loss" of wetlands. Questions developed by the Task Force for the public comment process included:

- What should be the appropriate Federal, State and local government roles in working toward the national goal of "no net loss" of wetlands?
- What regulatory and non-regulatory mechanisms now in place offer the best and most effective means of helping achieve the goal?
- What new or revised regulatory and non-regulatory approaches, including market-based incentives, should be considered?
- How effective are current Federal, State and local laws in protecting wetlands?
- At what level should the "no net loss" goal be applied—on an individual property basis, locally within the State or region, or at the national level?
- To what extent can wetlands effectively be created or restored? What tools or approaches should be used to ensure that creation or restoration projects are successful, especially over the long term?
- What role should mitigation banking play in working toward the "no net loss" goal?
- Should wetlands be indexed according to their functions and values in applying the "no net loss" goal? If so, what criteria should be used to determine the index?
- What are the potential effects of specific wetland policies on farmers, public works projects, businesses, and the environment?
- How do we balance the need to protect wetlands against the potential effects on farmers, businesses and public works projects?
- What research or data collection is necessary in working toward the "no net loss" goal?
- How should the Federal Government manage its wetlands? How should the existence of wetlands be addressed prior to disposal of Federal properties?
- What can be done to encourage public awareness of the value of wetlands?

The U.S. Department of the Interior was assigned responsibility for arranging the public meetings, managing the public record, and summarizing the comments, testimony, and transcripts of the meetings.

Overview of Written Comments Received

All written comments received or postmarked by September 28, 1990 (the close of the public comment period), were included in the public record. Approximately 4500 written responses including letters, form letters, maps, issue papers, video tapes, technical papers and other documents presenting a wide and divergent range of information and opinion regarding "no net loss" of wetlands were received during that time. Comments were received from United States Congressional representatives; State, regional, tribal and local governments; national and local trade and industrial organizations; national and local conservation organizations; individual companies and corporations; citizen groups; agricultural agencies; professional societies; forestry groups and organizations; and other organizations and individuals. Most written comments expressed general support for the concept of "no net loss" of wetlands. A large number of commenters recognized the ecological and economic values associated with wetlands and the majority of them supported their protection. Many expressed concerns over the nature and implementation of such a concept and the potential effects of a "no net loss" policy on landowners, natural resources, public projects, and a variety of economic activities. Letters and other materials received from conservation and environmental organizations, wetland scientists and many other individuals focused on the seriousness of wetland losses that have already occurred and the need to arrest the

decline of wetlands. These commenters also cited the contribution of wetlands to wildlife and fisheries habitat; to economic activities such as commercial fisheries; and to water quality and flood protection. Most letters and other materials received from agricultural groups, individual farmers and ranchers, business organizations, forestry and forest product organizations, industry groups and consultants, and other organizations and individuals expressed concern about the effects of present and future wetlands regulations and policies on economic activities and private property rights. A second concern of these organizations and individuals is the potentially adverse effects of a rigid "no net loss" of wetlands policy on other natural resources and on innovative approaches to wetlands protection.

Overview of Public Meetings

The Task Force held a series of six national meetings to encourage public participation and gather input on strategies for achieving "no net loss" of wetlands. Representatives from the Task Force attended these six meetings. All of the public meetings were set up in a similar manner, and consisted of two main parts. Each meeting began with presentations by panels, representing individuals and groups having similar backgrounds or interests, who were invited by the Task Force. Each meeting had four panels representing State and local governments; industry, agriculture and commercial interests; conservation groups; and technical experts. The public meeting in Alaska included an additional panel representing Native interests. Following the presentations by each panel, there was a short question and answer period that provided Task Force members the opportunity to discuss specific topics with panel members. The panel sessions were followed by an open microphone session. During this portion of the meeting, all attendees had the opportunity to provide brief oral comments or submit written testimony. All remarks made during the meetings were recorded by professional reporting services.

Comments received during the public meetings, particularly during the open microphone sessions, differed notably from comments received by mail. A majority of the comments heard during the open microphone sessions focused on the potential effects of a "no net loss" policy on landowners, particularly farmers. This is in contrast with the responses received by mail, the majority of which expressed support for a strong "no net loss" policy.

A brief summary of each meeting is listed below:

Bismarck, North Dakota—The first meeting convened by the Wetlands Task Force was held August 17, 1990, in the Doublewood Hotel, Bismarck, North Dakota. In addition to the issues and questions raised in the July 25 **Federal Register** notice, the primary focus of this meeting was the relationship between agriculture and wetlands, with secondary emphasis on wetlands restoration and creation, and migratory waterfowl programs. The geographic scope of the meeting encompassed the States of North Dakota, South Dakota, Nebraska, Kansas, Minnesota, Iowa, Montana, Wyoming and Colorado. Governor George Sinner of North Dakota provided opening remarks, and was followed by four panels that included 18 speakers. An estimated 250 to 300 individuals attended this meeting, of whom approximately 60 individuals made oral comments during the open microphone session.

Peoria, Illinois—The second meeting was held August 20, 1990, in the Continental Hotel, Peoria, Illinois. In addition to the issues and questions raised in the July 25 **Federal Register** notice, the meeting focused on wetlands conservation and industrial contamination; wetlands conservation and agriculture; and wetlands restoration and creation. The geographic scope of the meeting encompassed the States of Wisconsin, Michigan, Illinois, Indiana, Ohio, and West Virginia. West Virginia State Senator J.D. Brackenrich was the only Federal or State elected official who provided comments. Four panels, including 21 panelists, provided testimony. Panel presentations were followed by an open microphone session that included approximately 40 speakers. An estimated 250 individuals attended this public meeting.

New Orleans, Louisiana—The third meeting convened by the Wetlands Task Force was held August 27, 1990 in the Airport Hilton Hotel, New Orleans, Louisiana. In addition to the issues and questions raised in the July 25 **Federal Register** notice, the meeting specifically focused on the issues of coastal wetlands losses, the relationships between agricultural activities and wetlands conservation, and the relationships between Federal water resources projects and wetlands restoration. The geographic scope of the meeting encompassed the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, Kentucky, Arkansas, Louisiana, Texas and Oklahoma. Governor Buddy Roemer of Louisiana opened the meeting and provided remarks, as did Congressman Robert Livingston of Louisiana. These public officials were followed by four panels that included 22 speakers. The afternoon open microphone session included approximately 80 speakers. It was estimated that 500 individuals attended the public meeting during the course of the day.

Olympia, Washington—The fourth public meeting sponsored by the Wetlands Task Force was held at the Tyee Hotel, Olympia, Washington, on September 5, 1990. In addition to the questions and issues raised in the July 25 **Federal Register** notice, the Olympia meeting focused on coastal wetlands, with secondary emphasis on wetlands conservation and water management. The geographic scope of the meeting included the States of Washington, Oregon, California, Idaho, Nevada, Arizona, New Mexico, Utah, Hawaii, and the Pacific Trust Territories. Governor Booth Gardner of Washington welcomed the Task Force and attendees and provided remarks on "no net loss". Twenty-two speakers from four panels provided testimony followed by an open microphone session that included approximately 50 individuals. Approximately 200 people attended the Olympia public meeting.

Anchorage, Alaska—The fifth Task Force meeting was held on September 7, 1990, in the Clarion Hotel, Anchorage, Alaska. This meeting focused specifically on wetland issues in Alaska. In addition to the four panels that characterized the other public meetings, a fifth panel was organized to focus on interests of Alaskan natives as they involve "no net loss" of wetlands. The meeting was opened by Governor Steve Cowper, followed by the five panels. Twenty-seven panel members made presentations and 49 individuals provided oral or written comments during the open microphone session.

Providence, Rhode Island—The final public meeting held by the Wetlands Task Force was convened in the Omni Biltmore Hotel, Providence, Rhode Island, on September 17, 1990. In addition to the questions and issues raised in the July 25 **Federal Register** Notice, the Providence meeting focused on effects of urban development on wetland resources, the role of State and local wetlands protection programs and estuary and other comprehensive wetlands protection programs. The geographic scope of the meeting encompassed the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware,

Maryland, Virginia and the District of Columbia. Federal elected officials who spoke at the meeting were Senator John Chafee of Rhode Island, Congressman Thomas Ridge of Pennsylvania and Congressman Jimmy Hayes of Louisiana. Twenty-three panel members provided testimony and approximately 60 individuals spoke during the open microphone session. An estimated 350 people attended the meeting.

Summary of Comments

In the July 25, 1990, **Federal Register** Notice (55 FR 30279–80), public comment was sought regarding strategies for working toward a national goal of "no net loss" of wetlands, and public meetings on this topic were announced. All written comments, written testimony, and oral statements recorded during the public meetings or provided by September 28, 1990, were examined and are summarized below. This summary reflects the content of the record of public comments on "no net loss" of wetlands. It does not contain any responses, recommendations, or opinions of the Department of the Interior, or other members of the Task Force. Care was taken not to embellish discussions or make them more complete than the public record. Although discussion is not limited to the questions posed in the July 25, 1990 **Federal Register** notice, those questions provide a framework for this summary.

Issue 1. Public Hearing/Public Comment Process

Several commenters stated that the public meetings were not publicized as extensively as they might have been and that they were conducted too rapidly for citizens and groups to adequately prepare comments. One commenter expressed strong concerns that State governments, and particularly State legislators, were not adequately informed concerning the request for comments or the public meetings. Another felt that the process of putting together panels for the public meetings favored industry and commercial interests, since many potential panel members from academic institutions were unable to attend because they lacked the financial resources of industry, commercial and agricultural groups.

Several commenters were concerned about the number and locations of the public meetings. One respondent captured these concerns by stating that many other regions of the country also have complex and diverse issues that merited additional meetings by the Task Force. Commenters from California and the southwestern States cited issues regarding water rights, controversy regarding the potential effects of a "no net loss" policy on irrigation activities, and the unique characteristics of western wetlands as reasons for additional meetings in their regions. Others felt that the Intermountain and Great Basin regions of the United States have important wetland resources and that a meeting should have been held in those areas. In addition, several commenters noted that no meetings were held in the mid-Atlantic or southeastern States.

Issue 2. What Should Be the Appropriate Federal, State and Local Government Roles in Working Toward the National Goal of "No Net Loss" of Wetlands?

This question attracted many comments. There was general agreement that close cooperation between all levels of government is essential. There was a consensus that the Federal government should provide leadership in developing national policy. However, there were fundamental differences of opinion among respondents as to which level of government should have primacy in regulating wetlands. State and local agencies generally advocated a strong State role. Industry, commercial and agricultural interests generally favored a reduced Federal role. However, many other commenters stated that a strong Federal regulatory presence is necessary to effectively stem the loss of wetlands. Others commented that strong efforts by all levels of government, undertaken in a spirit of cooperation, are necessary to achieve the "no net loss" goal.

A. Role of Federal Government

There was general agreement that the Federal government should establish overall policy and definitions for "no net loss." The rationale for a strong Federal role was that wetlands are a national resource of critical importance. Most commenters felt that this requires not only a uniform policy, but uniform regulation and implementation. One commenter stated that the Federal government should adopt a "no net loss" policy in order to reduce current inconsistencies in the administration of Federal programs as they relate to wetlands. Another commented that Federal adoption of this goal would serve to establish a foundation upon which States and local programs could be built and that the "no net loss" goal should apply to Federally-regulated activities as well as Federally-supported actions.

Many comments were received that recommended a leadership role for the Federal government in wetlands research, particularly in regard to restoration, creation and mitigation banking, and in education and public outreach. One commenter stated that the Federal government could assume a leadership role by example, through good stewardship and by achieving a net gain of wetlands on Federal properties.

Many comments were received regarding the Federal Manual for Identifying and Delineating Jurisdictional Wetlands (Federal Interagency Committee for Wetland Delineation 1989). There was strong agreement that establishment of a single standard for wetlands delineation by Federal agencies is necessary and appropriate. However, there was a strong divergence of opinion concerning the content and application of the manual currently used by the Fish and Wildlife Service, Environmental Protection Agency, Army Corps of Engineers, and Soil Conservation Service.

One issue regarding the Federal role in attaining "no net loss" of wetlands that attracted many comments was the establishment of a single lead agency to direct Federal policies and regulations regarding wetlands. One commenter stated that the current scheme of having multiple agencies directing and influencing regulatory and non-regulatory programs and activities is confusing and counter-productive. Many commenters, particularly from the business and agricultural communities, stated that current Federal and State regulatory programs result in significant delays in permitting, as well as in implementation of mitigation and wetland restoration. Several Federal agencies were named as appropriate for such a leadership role, as follows:

- Several commenters suggested that the Soil Conservation Service (SCS) should have the lead in inventorying and identifying wetlands. SCS has a strong field presence and works closely with many landowners potentially affected by a "no net loss" policy. Similarly, another commenter noted that agricultural groups prefer working with traditional agricultural agencies, and felt that these groups should play an important role in developing wetland policy.
- Other commenters felt that the Army Corps of Engineers (COE) is the appropriate lead agency for wetland issues. COE was recommended primarily by industry and commercial interests who cited the COE public interest review process as a means to

balance economic considerations with the "no net loss" goal.

• A significant number of comments, particularly those representing conservation organizations, recommended the U.S. Environmental Protection Agency (EPA) as the lead agency. One commenter contrasted the broad mandate of EPA to restore and maintain the chemical, physical and biological integrity of the Nation's waters under the Clean Water Act to COE's traditional role in navigation and water development projects. Other commenters noted EPA's existing authority under section 404(c) of the Clean Water Act and its role in interpreting the section 404(b)(1) Guidelines.

• Several commenters recommended that the U.S. Fish and Wildlife Service (FWS) of the Department of the Interior take the lead in addressing "no net loss" of wetlands. Commenters cited the Fish and Wildlife Service's expertise in managing wetlands in the National Wildlife Refuge System and helping private landowners manage their own wetlands, as well as its responsibilities for protecting and enhancing fish and wildlife habitats, particularly for waterfowl. The Service's current responsibilities to develop data for the National Wetlands Inventory were also noted.

Not all commenters agreed with the concept of placing a single agency in the lead for developing and managing "no net loss" policies and programs. For example, one commenter noted that the current division of responsibilities for Section 404 acts as a "checks and balances" system that promotes balanced decision-making. Another commented that, in fact, decisions regarding wetlands will always have wide-ranging effects on natural resource management, agriculture, commerce, navigation and transportation, and that realistically, no one Federal agency could, or should, shoulder all of these responsibilities. Many commenters felt that coalitions of Federal, State, regional and local governments are necessary for good decision-making and planning.

Many commenters proposed reducing Federal regulation of wetlands. Specifically, recommendations were made to:

• Have the Federal government establish wetland value categories and allow the States to identify and classify wetlands.

• Provide Federal guidelines for State-administered wetlands programs, using the Coastal Zone Management Act (CZMA) as a model.

• Provide Federal guidance (but not necessarily regulations) for State and local development of area-wide master plans. Utilize existing mechanisms or new approaches at the watershed or regional level.

• At the Federal level, regulate only wetlands of national importance. Wetlands of special importance should be protected by acquisition, with compensation to landowners.

• Limit the Federal role to mediation of inter-State disputes.

Other commenters stressed the need for a continued strong Federal presence, and specifically a strong regulatory program. Several commenters cited examples of where Federal programs made the critical difference in decisions to protect or destroy wetlands. One example was the use of EPA's section 404(c) authority to protect wetlands threatened by a water supply project proposed in Rhode Island. The commenter stated that EPA's denial of the permit was instrumental in the State's subsequent determination that less costly alternatives, both in terms of costs to the State and environmental costs, were feasible.

B. Role of State Government

There was general agreement that the States have an important role in achieving the "no net loss" goal. Many respondents noted a wide disparity among the States in their ability to provide protection for wetlands, making it difficult to achieve a national goal of "no net loss." On the other hand, it was argued that States can be more innovative and flexible in their approaches to realizing that goal.

Comments from conservation organizations and many individuals recognized the importance of State involvement, but expressed concern about the ability of some States to resist development pressures. They generally opposed delegation of regulatory responsibility to States, unless it would be accompanied by very tough conditions and assurances to maximize wetland protection. Some commenters stated that many States are presently ill-prepared to assume the primary responsibility for wetlands regulation.

Many organizations representing industry and businesses, such as real estate and commercial development, and many individuals recommended State regulation under an umbrella of uniform Federal policy and standards. In addition to Federal guidelines, several commenters recommended that assistance in the form of funding be provided by the Federal government; otherwise States might be unwilling to assume these responsibilities. Specific suggestions regarding the States' role in achieving "no net loss" included:

• Delegate all section 404 regulatory responsibility to the States, with no Federal veto, or with veto by COE and not EPA.

• Recognize that wetland protection is a land-use program and that only the States should provide the necessary planning and implementation.

• Delegate to States responsibility for restoration, creation and all mitigation.

• Encourage States to assume a lead role in wetlands inventory, research, acquisition and public education.

Many individuals and organizations representing diverse views on wetlands issues cited Protecting America's Wetlands: an Action Agenda, the Final Report of the National Wetlands Policy Forum (Conservation Foundation 1988), in recommending that States assume a larger role in regulating wetlands. Many commenters noted that the Forum Report recommended a key role for States in implementing its other recommendations. The Forum Report noted that States are probably in the best position to work cooperatively with local governments in promoting private stewardship. It pointed out that States can use a variety of tools, including property tax incentives, creation of local tax districts and land trusts, flexible zoning guidelines, and transferable development rights, to help direct additional development away from wetlands. Several commenters pointed out that the Forum's recommendations are a package, and that State regulatory control is linked to other policy recommendations in the Forum Report.

C. Role of Local Government

The appropriate role of local government in achieving "no net loss" of wetlands did not receive as much comment as Federal and State roles in achieving this goal. One exception was the public hearing held in Anchorage, Alaska, September 7, 1990, where the Task Force convened a panel specifically to solicit viewpoints of local government. Many of the comments discussed below are the result of that panel.

Several comments noted that local government is an appropriate level for developing and implementing land-use planning because local governments have primary responsibilities for developing zoning regulations and land use plans; developing infrastructures such as roadways, sewer and water services, and schools; and providing other community services. Some commenters felt that local governments must play a key role both in developing and implementing wetland policies "on

the ground". Some specific recommendations included:

- Working with State and Federal agencies in developing comprehensive land use plans. Generally, local governments suggested that they should implement such plans.
- Administering section 404 general permits for certain classes of activities, such as rights-of-way for utilities, within local jurisdictions. This would be with certification by the State or Federal permitting authority.
- Participating in regional (such as watersheds) or State coastal planning. Alaska's Coastal Management Program and coastal zone management under the CZMA were cited as examples.
- Working cooperatively with State and Federal governments in developing natural resource inventories and using them in making decisions and in planning.

Several commenters recognized an important role for local government in wetland protection, but expressed concerns that local governments need strong State or Federal guidelines for protecting wetlands. Concerns were expressed about local government's susceptibility to development pressures. Some commenters felt that, without strong guidelines, cities, towns and counties might compete among themselves for industry and development by offering less stringent zoning and wetlands protection measures. One commenter emphasized the need to discourage such competition and stressed that only strong State and Federal guidelines will achieve consistency among localities in their approaches to managing both wetlands and development. Comments from some industry groups recommended a substantial local role. This included developing comprehensive local land-use plans, accompanied by ordinances and zoning for wetland protection.

Issue 3. What Regulatory and Non-Regulatory Approaches Now in Place Offer the Best and Most Effective Means of Helping Achieve the Goal? What New or Revised Regulatory and Non-Regulatory Approaches, Including Market-Based Incentives, Should be Considered?

Nearly all comments received through the public meeting process and through written correspondence referred to this broad issue. Very few comments expressed satisfaction with current regulatory and non-regulatory programs. Much of the discussion focused on the permitting process under Section 404 of the Clean Water Act. Suggestions for improving the process varied widely. Industry, commercial and agricultural organizations and many individuals, including farmers, ranchers, landowners and several State and local officials, generally expressed the view that the present Section 404 regulatory program is complex, lengthy, and may act to deny landowners full use and economic benefit of their lands. These comments generally recommended minimum government regulation and maximum flexibility in determining how the "no net loss" goal should be achieved.

In contrast, most commenters representing conservation organizations, hunters, recreational fisherman, commercial fishermen, and many State regulatory agencies pointed out that section 404 has been ineffective in preventing losses of wetlands and their important values and functions. These commenters noted that section 404 does not effectively regulate many activities that result in losses of wetlands or their functions, and that other destructive activities are not regulated at all. It was pointed out that the deposition of dredged or fill material is regulated under section 404, but that other activities are not. For example, normal agriculture and silviculture activities are exempt from regulation under section 404.

Other commenters stated that the 404 regulatory program is critically understaffed, and that illegal filling of wetlands continues to occur largely due to a lack of enforcement personnel. Finally, one commenter stated that over ninety-five percent of all permit requests are approved, and that such a high ratio of approvals seems to indicate that the section 404 program itself results in a significant loss of wetlands. However, a large number of comments were received that cited the Memorandum of Agreement (MOA) between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation under the Clean Water Act section 404(b)(1) Guidelines, and the Federal Manual for Identifying and Delineating Jurisdictional Wetlands as important changes that have affected implementation of the section 404 program.

There was general agreement that clear definitions of wetlands are critical to developing wetlands policy and protection goals. Many respondents advocated adoption of recommendations by the National Wetland Policy Forum Report in this regard.

A. Regulatory Approaches

The Clean Water Act's section 404 program drew the greatest number of comments. There was general dissatisfaction with the current regulatory process. Commenters who were also permit applicants complained about a lack of clear requirements for acquiring a permit, delays, inconsistencies between COE Districts, lack of coordination and agreement between Federal agencies and enforcement personnel, inadequate training for personnel, and most of all, a lack of clear definitions of wetlands and their values.

There was a wide range of recommendations for resolving problems with the section 404 regulatory program. There was some discussion about terminating it altogether, arguing that it was never intended to be a wetland protection program. Specific recommendations for modifying the program included:

- Streamline the permitting process, particularly by specifying clear definitions of wetlands; what is required to secure a permit, including mitigation requirements; specific deadlines for permit decisions; and a single enforcement agency.
- Make the process flexible enough to recognize regional differences in wetlands. Examples cited included western riparian wetlands, with unique hydrologic and soil conditions; Alaskan permafrost wetlands; pocosin wetlands in the Carolinas; and farmed wetlands.
- Eliminate or modify the Nationwide 26 Permit of the general permits program. It cumulatively results in significant losses of wetlands and is contrary to the goal of "no net loss".
- Initiate permit application fees and assessments, and require them of all applicants, regardless of whether or not a permit is granted. Revenues received could be used to increase staffing and training for wetland regulatory programs.
- Return the permit process to dealing only with navigable waters of the United States and require mitigation only to the "extent appropriate and practical."
- Require that the MOA between the COE and EPA regarding mitigation and the Federal Manual for Identifying and Delineating Jurisdictional Wetlands be subject to administrative procedures and processes.
- Promote the use of Advance Identification under section 404 and use by the COE of Special Area Management Plans (SAMPS) to direct development away from valuable wetlands.
- Develop regional or watershed plans that would be binding and which would provide direction for the permitting process.

• Develop regulations that define wetland functions in terms that most people can understand and accept.

• Address the concerns of highway agencies regarding mitigation by being flexible about on-site, in-kind, mitigation requirements.

• Establish regional and temporary disturbance permits modeled on the Nationwide General Permit System which allows certain kinds of activities in wetlands to occur without the need to obtain individual permits, under the presumption that the adverse effects of these activities are inconsequential.

Many commenters, including farmers, ranchers, and Farm Bureaus commented on section 404 and the "Swampbuster" provision of the Food Security Act. Among their recommendations relating to these regulatory programs were:

• Exempt prior-converted wetlands from Swampbuster restrictions.

• Exempt farmed wetlands from Swampbuster restrictions.

• Compensate landowners for wetlands that are regulated, thereby enabling them to realize the full economic value of their lands.

• Eliminate the placement of easements on foreclosed Farmers Home Administration (FmHA) properties.

• Establish the right of landowners to appeal a Swampbuster wetland determination by the Soil Conservation Service (SCS).

• Delegate to SCS sole responsibility for wetland regulation on farm lands.

• Eliminate regulation of artificial wetlands such as farm ponds, irrigation ponds, rice levees, beaver ponds, and man-made impoundments.

B. Non-Regulatory Approaches

The emphasis on non-regulatory means of encouraging protection of wetlands was toward providing incentives to landowners, and toward acquisition, but to a lesser extent. Successful existing Federal programs identified by respondents included the SCS Water Bank, the Department of Agriculture's Conservation Reserve, and the Fish and Wildlife Service's acquisition and easement programs.

Landowners generally advanced the argument that Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights", should be rigorously adhered to, and that landowners losing the use of their property should receive compensation. Executive Order 11990, "Protection of Wetlands", was the subject of a great deal of comment. Many commenters supported strengthening Executive Order 11990 to require all Federal agencies to vigorously support and enforce the "no net loss" policy, including programs that restore wetlands. Comments from the electric utilities industry recommended against including independent regulatory agencies, such as the Federal Energy Regulatory Commission, under the Executive Order. It was also suggested that the Executive Order be used as a vehicle to establish a Federal mitigation banking program.

C. Market-based Incentives

There was general agreement that tax relief should be used to provide incentives to landowners to protect wetland resources. Since more than seventy percent of all wetlands are on private lands and since economic considerations drive most land use decisions, many commenters felt it is proper and prudent to use economic incentives to help wetlands. Incentives should include establishment of wetlands preservation trusts with special tax incentives for wetland donations, land exchanges, and restoration activities. Purchase or preservation of existing wetlands should be considered as possible forms of compensatory mitigation. One commenter suggested that Federal and State agencies could provide technical information, such as wetlands maps and information about wetland functions and values, to private land trusts. This would assist private organizations in identifying valuable wetlands for purchase or easements. Other market-based incentives recommended by commenters included:

• Develop a program that combines set-aside payments and cost sharing arrangements in order to encourage creation and restoration of wetlands.

• Develop State or Federal tax incentives to create or restore wetlands, but require those wetlands to be protected by a conservation easement.

• Develop Federal legislation to facilitate land or resource exchanges as a method of compensation.

• Acquire the highest value wetlands, and, as a supplement, provide increased tax incentives for easements, donations or other setaside programs.

• Stabilize tax policy concerning wetlands; a stable tax policy and enhancement of returns for long-term investments are cornerstones for using market-based incentives to conserve wetlands. Restoration of capital gains differential, applicable for *bona fide* long-term risks, will also encourage wetlands preservation. Passive loss regulations need to be redirected to eliminate current disincentives.

• Allow compatible uses that provide an economic return to landowners who have wetlands under conservation easements. This will reduce the cost of such easements, provide for appropriate multiple uses, and still preserve valuable functions of wetlands.

• Revise the Federal Tax Code to encourage citizens and corporations to permanently protect and restore wetlands.

• Establish additional programs like the Federal Water Bank program to provide technical and financial assistance to private property owners interested in protecting wetlands. Existing programs should be expanded, supported, and modified to increase the permanence of protection given to wetlands.

Issue 4. How Effective Are Current Federal, State and Local Laws in Protecting Wetlands?

The majority of comments concerning market-based incentives expressed dissatisfaction with present laws and regulations relating to wetlands, and many suggested that new legislation is needed. Commenters from conservation and environmental organizations emphasized the need for an organic wetlands protection act modeled on the proposed "Wetlands No Net Loss Act of 1989" (HR 1746). It was stated that this proposed legislation should clearly define wetlands, establish a National Wetlands Clearinghouse, expand such programs as the Conservation Reserve, provide preservation incentives, and eliminate subsidies that result in wetland losses.

Other commenters emphasized legislation to protect property rights and provide compensation for landowners adversely affected by wetlands conservation policies or programs. There were also recommendations for delegation of regulatory responsibility to the States, using the Coastal Zone Management Act as a model.

Numerous commenters felt that the legal definition of wetlands should be made more understandable to the public, so that average citizens can recognize wetlands. An example cited by one commenter was the expired Corps of Engineers 1988 Regulatory Guidance Letter No. 86–9, which stated that wetlands are marshes, bogs, and truly aquatic areas. Definitions should help classify the values of wetlands, and mitigation should be based on those values. Other commenters felt that legislation was also needed to speed the completion of national mapping and to require all Federal agencies to utilize the same maps to identify wetlands and guide agency actions. Many commenters

supported mapping efforts of the National Wetlands Inventory project.

Comments on State laws were generally limited to discussion of their shortcomings, with very little comment regarding specific changes to State statutes. Commenters generally recommended developing Federal legislation in order to provide guidance to the States.

Issue 5. At What Level Should the "No Net Loss" Goal Be Applied—on an Individual Basis, Locally Within the State or Region, or at the National Level?

Commenters generally interpreted this question in two ways. Many commenters appeared to view this question as asking where policies concerning "no net loss" of wetlands should be promulgated. Others viewed the question as asking at what level the accounting or "balance sheet" for wetland losses and gains should be kept. As stated by one of the Task Force members during the course of the public meetings, the question asks whether we achieve "no net loss" at an individual site, by watershed, by biogeophysical region, or by political jurisdiction. Most commenters interpreted the question as it was intended, and went on to discuss the level at which they felt that compensation for wetland losses should occur.

Commenters who addressed this issue from a regulatory viewpoint generally stated that "no net loss" should be a national goal and therefore addressed at the national level. Some respondents emphasized the need to articulate this goal at the national level, but apply it at all levels of government. Other commenters suggested that levels or units with natural boundaries, such as watersheds, are more appropriate if the "no net loss" goal is to be achieved.

Many respondents favored application of the "no net loss" accounting system at the level of individual properties and permit sites, and emphasized the importance of each individual wetland, no matter what its size. The importance of mitigation on-site and in-kind was also emphasized. Some commenters felt that focusing on individual sites would encourage avoidance of wetland destruction and increase the likelihood that regulatory agencies would deny permits for losses of small wetlands. This would reduce "piecemeal" losses. It was the general consensus of those who commented that if "no net loss" could be achieved at the level of each individual project, the national goal would be met.

Regional and watershed levels were often used interchangeably in comments concerning how best to account for wetlands losses and gains. When commenters referred to the State and local levels, they generally did so in the context of regulation. The watershed or regional level was usually considered preferable for mitigation from an ecological or planning perspective. There was some emphasis on the importance of this level in reaching a balance between economic and environmental values. Some commenters felt that regional planning is needed to reach this balance and argued for regulation at the State level, so this might happen.

Several respondents favored the watershed level for mitigation, particularly when mitigation for wetland losses is not feasible on or near the site of the loss. Another point stressed by several commenters was that wetlands can differ markedly between watersheds, and for that reason, they recommended against mitigating wetland losses outside of a watershed. One commenter suggested that when compensation for losses occurs outside the local region or watershed, requirements for mitigation should be greater than for mitigation within the watershed. He felt that more acres would need to be restored or created in order to ensure that benefits were sufficient to compensate for wetland losses.

There were sharply divergent views about how well, if at all, a "no net loss" policy could be applied at a national level. Respondents favoring the national level stressed the following points:

- National goals are necessary and must recognize that all wetlands are not created equal.
- National goals should emphasize wetlands of national importance.
- National goals are necessary to provide Congressional oversight.

Commenters who addressed the question of where the "balance sheet" on gains and losses should be kept were sharply split on the question. A national approach would allow mitigation of losses outside of the geographical area of the wetlands loss. Commenters from several industries and forest product companies preferred the national level. They stated that wetland losses are a national problem. They felt that by addressing the question in such a manner, areas suffering the greatest losses would potentially receive the greatest benefit from compensation for losses. Commenters representing large companies that managed wetlands in many States preferred the national level; such a policy would allow them to trade-off gains and losses among their properties. Others commented that national coordination was necessary, and strongly supported such an approach.

Several members of technical and conservation panels opposed the concept of a national level for balancing wetlands gains and losses. Several commented that wetlands are only one important element of aquatic ecosystems, and that the proper functioning of ecosystems should be the major goal of any attempts to manage changes in ecosystems, such as gains and losses in the quality or quantity of wetlands. They argued that watersheds, therefore, are the only boundaries that make sense for managing aquatic ecosystems, despite the fact that they complicate management by crossing political boundaries.

One commenter stated that we should not place ourselves in the position of trading off wetlands among regions; there is no way to exchange the values of Alaska tundra wetlands for those furnished by Louisiana bottomlands. Another commenter questioned whether it is wise ecologically to create or restore bogs in New Jersey in order to mitigate losses of salt marsh in the Carolinas.

Issue 6. To What Extent Can Wetlands Effectively Be Created or Restored? What Tools or Approaches Should Be Used To Ensure That Creation or Restoration Projects Are Successful, Especially Over the Long Term?

There was general agreement that restoration is more feasible and desirable then creation of new wetlands. However, many respondents emphasized the desirability of protecting existing wetlands first. These commenters stated that, as a national policy, we should not trade-off existing functioning wetlands for the promise of future restoration or creation. Because our knowledge of restoration and creation of wetlands is limited, there is always a substantial risk that wetlands and wetland functions and values would be lost in such a trade-off. Therefore, restoration was considered a second choice to avoidance, and creation of wetlands was generally rejected as a substitute for loss of original wetlands.

Comments received from mining companies and several organizations pointed out that mining operations often create new wetlands specifically to treat acid mine drainage and other effluents. This is done as a standard restoration practice, and not specifically as compensation for wetland losses. In this way, the mining industry can contribute to a net gain of wetlands. Commenters stated that with proper planning and

execution, mined areas can be transformed into valuable wetlands.

A. Wetlands Creation

The majority of comments provided by technical experts and organizations having expertise in wetlands management emphasized that creating new wetlands from uplands or shallow water is difficult, expensive and unreliable. Wetlands creation was characterized as more of an art than a science; a great deal of long-term research is necessary before it should be considered a viable option for replacing existing wetlands. Problems identified by commenters included:

- Creating some wetland types is very difficult and requires a very long time for functions to be replaced. Examples include bogs and mature bottomland hardwood forests.
- Converting uplands to wetlands results in the loss of potentially valuable upland habitats.
- Creating hydrological conditions that will result in the wetland community desired is technically difficult.
- Creating wetlands is costly.
- Assuring long-term monitoring of creation sites and assuring additional investment or work to enhance their viability is often difficult, usually impossible, but necessary.
- Introducing and maintaining animal populations on created sites and measuring the recovery of animal populations on created sites are often difficult, but necessary.

Several commenters provided specific examples of wetlands creation and restoration projects, and provided an analysis of how well these sites have developed wetlands or recovered wetland functions. One example was an examination of a created tidal cordgrass marsh from a highly disturbed high marsh area in southern California. Several years of data indicate that this site has not fully gained many of the functions of a near-by reference site. Another commenter provided a technical review of several restoration and creation sites in Connecticut, and compared these wetlands to undisturbed natural systems. Again, not all wetland functions returned to the restored and created sites. The commenter concluded that wetlands creation has proven to be consistently effective only for two wetland types. These types are low marsh *Spartina* tidal areas and freshwater emergent wetlands.

Some suggestions to enhance the effectiveness of wetlands creation included:

- Establish a clearinghouse to share information, particularly about techniques that have proven successful in restoring or creating wetlands.
- Develop plans and create wetlands prior to permitting losses of established wetlands.
- Assure that funding and capability are available for long-term monitoring and remedial actions.
- Develop effective, long-term research programs. This was strongly recommended by many commenters of diverse interests.
- Establish long-term reference sites and demonstration sites, both for restoration and creation of wetlands.
- Establish training programs for both the private and government sectors. Wetland regulators in Federal, State and local government need additional training to evaluate or assist in the preparation of wetland creation or restoration. The private sector also often lacks such training.

B. Wetlands Restoration

The majority of commenters who addressed restoration agreed that many degraded or drained wetlands can be restored. Emphasis was given to the need for careful planning, monitoring, and operation and maintenance of restored wetlands. Several technical experts stated that the key element in restoring freshwater wetlands is the restoration of a suitable hydrologic regime. Simple actions such as plugging drainage ditches and drain tiles are often sufficient to restore wetland hydrology.

Some suggestions in addition to those for creation included:

- Bonding of developers to ensure adequate funding for restoration, monitoring, and maintenance of wetlands. Bonding of western strip-mined areas until restoration is completed and successful was cited as an example.
- Establishing responsibility at the local level of government or with an independent organization in order to assure long-term oversight of restoration projects.
- Developing a comprehensive and coordinated regional planning process to ensure maximum benefits. Such planning could direct restoration efforts to those parts of a watershed where restoration would yield the greatest benefits.

Issue 7. What Role Should Mitigation Banking Play in Working Toward the "No Net Loss" Goal?

Most commenters understood wetland mitigation banking to consist of treating wetland impacts as debits, and wetland creation, restoration, and mitigation as credits. The accounting process where they offset each other is the bank account. Similar to a checking account, a wetland mitigation bank account ideally maintains a positive balance. Debits come about when a construction project (1) adversely affects wetlands, (2) on-site mitigation is not feasible, or (3) on-site mitigation is feasible, but does not entirely compensate for the adverse impacts.

Suggestions for defining the role of mitigation banking in achieving "no net loss" of wetlands varied widely. Mitigation banking as an issue was commented on primarily by individuals representing industry, commercial interests, the forest products industry, State and local governments and conservation organizations. It attracted relatively few comments from private individuals commenting solely on behalf of themselves.

Commenters representing several industries stated that mitigation should be flexible and banking allowed when on-site mitigation is not possible. Further comments by these groups included:

- Develop a consistent, nationwide mitigation policy.
- Practice mitigation on a local scale, such as on-site or within the watershed impacted, in order to ensure that lost wetland acreage is replaced with wetlands having the same values.
- Limit regulators to placing conditions upon developers only if those conditions directly ameliorate some harm created by the project itself.
- Standardize mitigation policies and techniques to the degree practicable in order to avoid *ad hoc* approaches to mitigation. Such approaches sometimes result in high costs for the amount of mitigation gained, project delays, and unanticipated losses of wetland resources.
- Improve coordination among local, State and Federal regulators. Developers commented that coordination on mitigation requirements was often done on a case-by-case, piecemeal basis. They felt it was unfair when agreements reached on a given project could not be used to design other similar projects, or where different processes had to be pursued to resolve identical conflicts associated with identical projects.
- Give greater consideration to the cost-effectiveness of mitigation efforts. Commenters stated that high costs were not always justifiable on the basis of the quality of the benefit received by the wetland resource.
- Provide incentives for mitigation that exceeds the minimum required. Developers commented that sometimes extra mitigation measures were possible

on a project, but there was no incentive to do a better job. When mitigation was more than the minimum necessary or required, extra efforts of industry often went unnoticed and unappreciated.

• Develop new approaches regarding mitigation of small impacts, especially impacts that should not or cannot be mitigated onsite or ones that are too small to warrant off-site mitigation. Commenters stated that rectifying these impacts causes much work and costly delays. Conversely, small impacts sometimes "fall through the cracks" and are not mitigated at all.

A majority of comments from industry and commercial respondents stated that mitigation banking, if properly administered, may be a positive factor in compensating for wetlands losses and achieving the "no net loss" goal. It was viewed as a potential means for maintaining and restoring large areas of degraded wetlands. In principle, it permits pooling of private sector resources under supervision of experts. These could be private or government managers. Most proponents of mitigation banking stated that banking needs to be maintained under the supervision of experts to assure acceptable performance. Industry feels that small, "band-aid" mitigation should be replaced by a few, large-scale mitigation banks. When mitigation is required for small wetland losses and where on-site compensation may not be practicable, individual permittees should be allowed to make a cash contribution to the bank. These funds could collectively be used to upgrade or enhance a large area in a way that benefits environmental values more cost-effectively than smaller, uncoordinated efforts.

The concept of a Federally-mandated mitigation banking program was supported by many in industry. Commenters suggested that mitigation banks could be established for the States to coordinate mitigation activities in wetland ecosystems. Most respondents were in agreement that mitigation banking should play a larger role than it does currently, to insure that the goal of "no net loss" of wetlands can be obtained. Commenters stated that banking should be pursued in the context of local and regional management plans that provide protection for wetlands over the long term. Most respondents generally agreed that contiguous wetland areas and larger wetlands are likely to have significantly higher values for wildlife than smaller tracts. They view mitigation banks as providing an opportunity to maximize functional values for a given area of restored or created wetlands.

Another commenter suggested that a major advantage of mitigation banks is that the functional values of the mitigation wetlands can be fully developed and verified before wetland impacts occur. Developers of wetlands could be required, or could have the option, to establish credits with a mitigation bank prior to initiating specific projects that result in unavoidable wetland losses. In this way, developers would be able to document their successes. Commenters suggested that each bank could also have its own credit system based upon the functional values of the wetlands in the particular area to which the bank applies.

A number of comments stated that government should create a role for mitigation banking in the section 404 program. They suggested that the program could include credits for voluntary creation or restoration of wetlands, provide minimum standards for replacing wetlands, and establish an institutional framework for banking so companies and individuals could receive credit for creating or restoring wetlands. The permitting authority could then be responsible for providing a yearly report describing each mitigation banking proposal submitted, the disposition of the proposal, and reasons for individual dispositions. In summary, developers felt that mitigation banking should be accepted by regulatory agencies as a mitigation practice. They emphasized that wetland banks will be able to replace the functions and values of the impacted wetlands if designed properly, with regulatory agencies assisting. Regional banks are favored because they could be located in areas that are more isolated and easier to protect, and could be designed to provide a variety of functions and values.

Commenters characterized banking as helpful in solving some of the problems identified earlier, by speeding up inter-agency coordination, standardizing the approach to mitigation requirements, and outlining a means of mitigation acceptable to all agencies involved. To summarize the views of commenters who favored mitigation banking, it should be flexible, should be allowed when on-site mitigation is not possible, and should be based on implementing a consistent mitigation policy nationwide.

Other respondents, including conservation organizations and individuals, expressed opinions and made recommendations that were more skeptical about mitigation banking than those expressed by industry, commercial interests and others. Several suggestions were received from technical experts and other commenters regarding the ratios that should be considered for mitigation banking and other mitigation efforts. "Ratios", as discussed in mitigation banking, refers to the ratio of wetlands loss from a project or activity to the offset required for restoration or creation. For example, a ratio of two to one would mean that two acres or functional units of wetlands would need to be restored or created for each acre or unit lost. Other concerns and comments expressed by conservation organizations and other respondents are summarized below:

• Acquisition of existing wetlands or "preservation" is not mitigation banking. In order to meet the goal of "no net loss", it is necessary for mitigation banks to include the acquisition of non-wetland or former wetlands, with subsequent restoration of those areas to fully-functioning wetlands.

• Mitigation banking should not be a substitute for avoidance or minimization of wetlands impacts, or for on-site mitigation of impacts. Avoidance, as one commenter stated, is far preferable to mitigation; avoidance should be the national goal, not just "no net loss" of wetlands.

• Mitigation banking should be a last choice after avoidance and minimization of wetlands impacts are found to be insufficient to fully reduce those impacts.

• Mitigation ratios should be greater than one to one because there is potential risk that restored sites may not provide all the functions and values that characterize undisturbed sites.

• Mitigation banking relieves the pressure on developers and agencies to look for alternatives to issuing a permit which leads to destruction of wetlands. Most respondents felt that as long as sequencing of the 404 permit process is followed, mitigation banking could be used to offset impacts that could not be avoided, or mitigated on site.

• Creation of wetlands for mitigation banks is still largely experimental and untested. Banking that includes wetlands creation should not be regarded as "saving" an existing wetland. However, most commenters felt that banking could play a valuable role in certain situations.

• Mitigation banking should largely be the responsibility of project sponsors and beneficiaries, operating under Federal or State guidelines. Commenters felt that mitigation banking will be a viable tool only if project proponents plan, sponsor and pay for mitigation banks.

• Credits to wetland banks should be accepted only after efforts to restore or create wetlands have proven successful, and not merely because of the intent of such efforts.

• Mitigation should not be a central part of a national policy or program of "no net loss". "No net loss" should focus on avoidance and restoration.

• Mitigation banks must be subject to approval by Federal and State fish and wildlife agencies. With appropriate initial funding, State and Federal fish and wildlife agencies could establish and operate banks.

• Mitigation banking must be committed to the conservation, enhancement, restoration and creation of wetlands on an ecosystem basis.

• Mitigation banks should be regulated so that they only consist of wetlands that have been effectively restored or created. Preservation of existing wetlands should not contribute to the "no net loss" goal.

Some commenters suggested that there is potential for abuse of the intent of mitigation banking. They believe that some developers would disregard ways to minimize or avoid wetland losses and simply turn to banking as their preferred option. They were concerned that this would undercut mitigation sequencing requirements and diminish efforts by permittees and permitting agencies to seek the most environmentally sound alternatives. In cases where mitigation banking is used, conservation and environmental organizations and some individual respondents have suggested ways of managing mitigation banks. These commenters included the following requirements for mitigation banks:

• Legal control over the wetlands, such as a conservation easement.

• A methodology for determining the credits and debits for the banked wetlands and projects utilizing the bank.

• A management plan that identifies the functions and values that are to be attained by wetlands created or restored.

• Operation and maintenance requirements that are intended to achieve the goals of banking management plans.

• Permission to engage in periodic monitoring and inspections of banked wetlands by the EPA, FWS and COE or other Federal, State and local agencies.

• Development of minimum qualifications, experience and financial capability of organizations and individuals managing projects to restore or create wetlands.

Issue 8. Should Wetlands Be Indexed According to Their Functions and Values in Applying the "No Net Loss" Goal? If So, What Criteria Should Be Used To Determine the Index?

This was a controversial issue that received substantial comment. Industry, agricultural and commercial commenters, and many individual respondents were strongly in favor of indexing, arguing that all wetlands are not of equal value. Generally, although not always, respondents from conservation organizations, hunting and fishing organizations and groups, commercial fisheries organizations, and many individual respondents made the point that virtually all wetlands have functions and values worth preserving. They opposed indexing, emphasizing that it would result in a continued loss of the nation's wetlands base.

Nearly all commenters who addressed the issue agreed that additional research is needed to better determine the functions and values performed by wetlands. Many respondents urged that an accurate and simple procedure for assessing wetland values be developed. They also felt that information on wetland functions and values needs to be made widely available to decision-makers and the public, so that better decisions are made regarding wetlands protection.

A. Desirability of Indexing According to Function and Value

Proponents of indexing identified several important advantages of assigning values to wetlands. These included:

• Balancing losses and providing for restoration of functional values. In particular, commenters felt that indexing would result in less costly and less extensive mitigation requirements, particularly when development affects wetlands that are dysfunctional or that provide few, if any, significant values.

• Establishing wetland protection priorities. Again, commenters believed that this would facilitate development in wetlands that they understand to have little or minimal value.

• Identifying high value wetlands for protection. Low value wetlands, by definition, have little value, and impacts to them can be readily compensated for or mitigated.

• Providing landowners, government and the public with clear criteria that identify the most important wetlands.

• Providing flexibility in determining mitigation options.

Proponents of indexing also argued for an indexing system that takes into consideration the tangible economic benefits and other uses of wetlands, and assigns them numerical values.

Commenters who expressed opposition to the concept of indexing wetlands stated that indexing:

• Will encourage destruction of so-called low value wetlands without a clear understanding of their values or functions.

• Will serve to protect the most valuable wetlands, but sacrifice those of lesser value, eventually leading to elimination of most wetlands, not protection.

• Will not provide an objective measure of wetland values. Although all wetlands are not of equal value or provide the same values, it is subjective to compare one value against another. The value of wetlands for fisheries habitat may or may not be more important than its value for water quality enhancement. In many cases, its value may depend on perceptions shaped by an individual's or organization's needs, roles, or responsibilities. Once functions are established, determining indexing values becomes a subjective process.

• Will not be scientifically accurate. We do not have the scientific information to accurately quantify functions and values.

• Will not be able to measure values of a series of wetlands interacting as an ecosystem. Most evaluation techniques currently used can not quantify and compare landscape-level functions. Revised and improved evaluation and assessment techniques, and techniques that reflect the unique characteristics of various regions of the country, are needed.

• Will tend to underestimate the value of smaller wetland tracts. the minimum acreage needed for various wetland functions is not well understood.

• Will become a bargaining chip for destruction of so-called low-value wetlands.

Several commenters agreed that indexing had some value, if certain caveats were considered. They included:

• Indexing could be used to set priorities for acquisition of wetland sites. However, indexing should not be considered when establishing mitigation requirements.

• Indexing should be used as a measure for protecting and maintaining wetland values, but not as a basis for economic evaluation.

• Indexing can be used as a tool, but cannot replace professional judgement.

• Indexing can be applied on a regional, State, or local basis, and can

be useful in establishing local and State preservation goals.

• Indexing can provide information on wetland functions that is valuable in Federal and State permitting processes, but its use must be considered on a case-by-case basis.

• Indexing, if used in the mitigation process, should only be used to identify in-kind restoration and replacement.

B. Criteria for Indexing

It was generally agreed criteria for indexing must be built around functions and values of wetlands. Specific criteria recommended by commenters depended on the objectives of the commenter. A number of systems presently in place were suggested, although fault was found with all of them. Included were the Fish and Wildlife Service's Habitat Evaluation Procedures, and the Corps of Engineers Wetlands Evaluation Techniques (WET). Commenters made references to State statutes and programs in Massachusetts, New Jersey and Georgia that rated wetlands, and described these programs as useful. The list of functions developed and cited by the Wetlands Forum Report was also recommended as a basis for evaluating wetlands.

Specific recommendations relative to indexing criteria included:

• Consider wetland type, location, relative abundance, condition, status of the watershed, importance to the community, and general ecology of the area being affected.

• Rate functions and values quantitatively.

• Consider the presence of endangered and sensitive species, the extent of resource degradation, threats of development to the site, and the importance of the site both locally and regionally.

• Take development of artificial wetlands into account.

• Consider the amount of each wetlands type remaining in the State, exceptional functions, storm surge protection, value to migratory birds and other wildlife, aquifer recharge, and the extent of protected wetlands in the State.

• Determine value by weighing each value and expressing it in measurable units, such as biomass, energy stored, economic value, etc. Develop models based on these units.

• Develop regional evaluation techniques that take into consideration unique ecological and economic conditions of various regions of the country.

Issue 9. What Are the Potential Effects of Specific Wetland Policies on Farmers, Public Works Projects, Businesses, and the Environment?

A. Effects on Farmers

Wetland policies may affect farmers more than any other single group of people because they own, rent, lease or are near much of the land potentially affected by wetland policies. Several commenters stated that many of the nation's farmers and ranchers would potentially be impacted by wetland policies developed to achieve a "no net loss" of wetlands. Comments by agricultural organizations, some State and local governments, and many individuals regarding the effects of wetland policies on farmers are summarized below:

• Policies developed to address "no net loss" should not restrict a farmer's right to manage his lands as he sees fit and produce food and fiber cost-effectively. Farmers should be included in deciding how to attain "no net loss" of wetlands. Unless special provisions or compensation are provided, wetland policies are likely to affect a farmer's day-to-day activities, long term planning, the value of his land, and his ability to produce a crop and income.

• Farmers may not be able to cultivate additional cropland because of the existence of potential wetlands on their property; lands owned by farmers should not become unavailable for farming simply because they have potential to be restored or converted to wetlands.

• Farmers will not be able to maintain or improve drainage on existing farmlands because of potential wetlands. This will decrease the productivity of existing farmlands, increase the costs of farming, or both.

• Farmers may not have flexibility in short term or long term planning because of uncertainty about restrictions that may apply to their operations near wetlands or potential wetlands.

• Wetlands attract wildlife that can cause significant damage to crops. This problem is currently increasing throughout the country according to farmers.

Some commenters stated that a "no net loss" policy could force farmers into bankruptcy, if mitigation is required for farm improvements and significant acreage is taken out of production. Several commenters cited an example reported in April, 1990, in the New York Times. The Times reported that a landowner was requested by the Corps of Engineers to cede half of his 187 acres to Federal control for a wildlife easement in exchange for building a levee to guard his fields against flooding. Commenters stated that such actions place unfair and highly unreasonable burdens on farmers. Other commenters stated that full exemptions to "no net loss" of wetlands should be allowed for normal ranching and farming, so this country will have abundant food and fiber.

Agricultural organizations and many individual farmers expressed strong concerns regarding the current regulatory program and focused their comments on the Federal Manual for Identifying and Delineating Jurisdictional Wetlands. According to commenters, this new effort at defining wetlands has caused tens of millions of acres of prior-converted wetlands currently in production to be classified as jurisdictional wetlands. These same commenters stated that this is because the delineation manual assumes that if an area would "normally" support hydrophytic vegetation and contains the basic wetlands hydrology and hydric soils, then it is a wetland. (Revisions to this manual are being considered by the four agencies that developed it.)

Many farmers and ranchers objected to such assumptions. They feel that the manual should only identify "true wetlands", which they perceive as wetlands that exhibit functions and values that support wildlife. One commenter noted that farmers and ranchers cannot accept delineating land that is inundated for less than five percent of the growing season as regulated wetlands. Examples that were provided included "piney woods" in the coastal plains of Georgia, Florida and the Carolinas; types of bottomland hardwoods in the southeastern United States; bosque lands in the southwest; and prior-converted wetlands in many other parts of the county.

Many farmers and ranchers stated that the net effects of adopting the Federal Manual for Identifying and Delineating Jurisdictional Wetlands are economic and land use restrictions, permit requirements, and costly mitigation required of people whose only primary asset is often their land. They feel that additional government regulation is the principal cause of declining property values. Commenters cited figures that approximately 60 million acres, consisting primarily of prior-converted wetlands, are subject to classification as wetlands, as defined in the Federal delineation manual.

Some commenters stated that many of the benefits of wetlands protection accrue to someone other than the landowner, although the cost and

burden of regulatory compliance falls to the landowner or farmer. From the viewpoint of many agricultural organizations and individual commenters in the agricultural community, one of the major shortcomings of current wetland protection efforts has been a failure to recognize and respect private property rights.

Many farmers and ranchers stated that a major issue underlying the "no net loss" goal is the effect of conservation efforts on landowner's private property rights. They stated that these rights need to be preserved. If society wants to protect wetlands, society should be willing to pay for that protection. Farmers and ranchers feel there are no provisions for just compensation for lost property rights or lost economic potential resulting from wetland regulations. The use of privately-owned wetlands should not be restricted by law or regulation without just compensation.

Not all farmers agreed with this perspective of "no net loss" and a few cited the benefits to themselves and society of preserving wetlands on their properties such as providing a source of water in dry years, protecting groundwater, and providing habitats for fish and wildlife. One farmer stated that much of the land converted to croplands is marginal and provides little added value to farming operations. He felt such lands have much higher values as wetlands than as farmlands. Others cited successful programs, such as the Conservation Reserve Program, that benefitted their farms.

Some commenters felt that concerns about taking of private property by virtue of wetlands legislation have been greatly exaggerated. They cited the fact that wetlands, as "waters of the United States," have already been recognized as having public values. If they are lost or not properly managed, the public will suffer. Concerns were raised that mismanagement could result in pollution of public water supplies, increased flooding of downstream properties, and reduced abundance of public resources, such as fisheries and wildlife.

Several commenters remarked that the Federal government frequently pays compensation when it takes land for Federal highways and Federal water reservoirs, and should do the same when land is taken to protect or restore wetlands. Having recognized the importance of protecting the nation's remaining wetlands, the government should be prepared to provide landowners just compensation in those relatively rare instances in which wetlands restoration is deemed a "taking." Some commenters suggested that when wetland protection precludes other desirable land uses, landowners should receive compensation, using revenues from wetland tax check-off programs and impact-fee programs.

B. Effect of Wetland Policies on Businesses and Public Works Projects

Commenters stated that wetland policies may restrict land use unnecessarily and unwisely. Public works projects may be required to avoid wetlands and, as a result, may potentially affect other valuable lands, such as croplands and commercial properties. Commenters expressed concern that this may make new public works projects more expensive and reduce lands available for agriculture. Similar comments concerning the potential effects of wetland policies are summarized below:

- Strict Federal wetland policies do not account fully for public project needs and benefits, such as those provided by water and transportation projects. The section 404 program of The Clean Water Act was criticized extensively by developers because it has impacted proposed major water projects in the arid West, either by delaying them or by making it impossible for project sponsors to construct or operate them in the manner they feel is necessary.
- Section 404 and particularly 404(c) have taken long-term water planning projects out of the realm of the local community and placed them under Federal authority because 404(c) provides EPA with final veto power.
- The "no net loss" program must accommodate due process considerations for businesses. Several commenters felt that the definition of wetlands in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands is overly expansive and could affect a significant portion of future development, since approximately three-fourths of all wetlands are privately-owned. Costs of compensating landowners could be prohibitive.
- The COE and EPA, in issuing the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, have effectively expanded the definition of wetlands, and thus expanded Federal jurisdiction over wetlands, according to several business organizations and individual commenters. They feel that this has had a dramatic impact on numerous local economies. In its April 1990 report, Economic Implications of Wetlands Regulations in Southeastern Virginia, the Southeastern Virginia Planning District Commission indicated that the cost of wetlands regulation to southeastern Virginia could range, under a worst case scenario, from $50 billion to $97 billion.
- Wetlands regulations affect land prices and thus, the cost of housing. Yet, few studies have been done to determine the economic implications of wetland regulations. One study by the President's Commission on Housing found that the section 404 regulatory program limited the amount of land available for housing and contributed to delays in development of new housing in some areas.
- Depending on how a "no net loss" policy is applied, it could have additional effects on housing. If one were to apply a strict wetlands protection policy on a site-specific basis and make it a requirement for each development permit, the impact could be tremendous. This would, in all likelihood, result in increased permit processing times and increased costs for mitigation.
- Section 404 of the Clean Water Act has become a national zoning law by limiting business and development in wetlands. According to several commenters, it has made development very costly and allows groups whose primary interests are other than development to secure a major foothold into development planning.
- Current and proposed wetland policy and practice have increased costs to project proponents and society as a whole, and disrupted both private and public planning efforts. Increased costs and inefficiencies arise largely from delays inherent in the permitting process. Commenters from several business organizations felt that this happens because both the COE and EPA have regulatory authority over development projects affecting wetlands. While EPA seldom vetoes projects under section 404(c), the threat of a veto is constant. As a result, the COE is often unwilling to make a permit decision without EPA's concurrence. In practice, this means that an applicant must satisfy both the COE and EPA, even though the two agencies may have differing views on a proposed project. This process can take months and can detract from efforts to provide or promote a positive business atmosphere.
- The lack of enforceable deadlines for action on section 404 permit applications is another important concern of the business community. An application may wait for months without a decision, particularly when the COE and EPA disagree. Standards for issuance of permits are often vague and

inconsistent, leaving permit applicants without clear direction.

• Delays and added costs to businesses also result from the perception of some agencies and regulators that development must avoid all wetlands, regardless of their functional values. This strict avoidance approach is a result of the recent mitigation MOA between the COE and EPA which advocates a sequencing process for identifying mitigation requirements. The effect of the MOA in the field, whether or not intended by policy-makers, is that regulators focus on avoidance of impacts to the exclusion of all else. This often requires permit applicants to demonstrate "avoidance" without reference to the standard of the section 404 (b)(1) Guidelines, which specify that avoidance is required only to the extent it is practicable.

• The long time period required for permit decisions, the lack of clear and specific goals and processes under section 404, and the sometimes conflicting mandates of Federal agencies were cited as problems by several commenters representing business and commercial interests.

Conservation groups stated that businesses should first seek to avoid impacts to wetlands, and if that is not feasible, they should fully replace the functions and values lost. These groups feel this is reasonable and essential to ensure that individual actions do not further degrade the public's wetland base and associated resources, such as fish and wildlife, and water quality. Costs of protecting and restoring wetlands should be assimilated into a development project in the same way other necessary project costs are reflected. Project beneficiaries would then be responsible for project costs.

Many commenters were concerned with the potential impacts of a "no net loss" policy on Alaskan businesses and public projects. They raised concerns about the effects of a "no net loss" policy on urban growth and development in that State. Commenters also addressed the effects of "no net loss" on activities such as oil and gas exploration, commercial fisheries, and mining. One commenter stated that Alaska wetlands cover more than 170 million acres, which accounts for approximately 50 percent of the total land area and about 70 percent of the non-mountainous area of the State. Wetlands cover the bulk of the unrestricted lands available for development. Thus, wetland protection programs and policies have particularly significant consequences for Alaska.

Several commenters felt that a "no net loss" of wetlands program in Alaska cannot be justified since only one half of one percent of Alaska's wetlands have been lost, compared to over fifty percent in the lower forty-eight States. In addition, half of Alaska is already protected as Federal and State parks, wildlife refuges, wilderness areas and other conservation units. Commenters stated that Alaska is unique and that wetland policies and principles applied to Alaska need to be tailored to meet the unusual circumstances in this part of the nation.

Organizations and individuals that represented or reflected the viewpoints of the oil and gas industry in Alaska expressed many of the same general concerns already summarized in this section. Most commenters who addressed the subject of "no net loss" from the oil and gas perspective emphasized that development of these resources has had few, if any, significant impacts on Alaska's wetlands. They pointed out that most areas disturbed by oil and gas development should not be considered as being wetlands because they do not provide the same values as wetlands in the lower 48 States. Some noted that the size of disturbed areas, when compared with the vast acreage of undisturbed wetlands in Alaska, is so small as to make the impacts of oil and gas development insignificant. Others argued that oil and gas disturbances are only temporary and that disturbed wetlands will recover soon after the facilities responsible for the disturbances serve their useful life. In general, representatives of the oil and gas industries expressed a firm belief that these industries have an exemplary record of doing everything reasonable to keep wetlands disturbances to a minimum. They also felt that since wetlands comprise so much of the Alaskan landscape, it is virtually impossible to avoid disturbing wetlands, regardless of where development occurs. Many felt that any impacts that cannot be minimized or avoided should be accepted as necessary consequences of ensuring economic growth and reliable sources of energy.

Some representatives of oil and gas interests expressed dissatisfaction with the regulatory climate in Alaska, as it involves wetlands. They described regulatory processes as sometimes being needlessly restrictive, too often insensitive to national needs, and characterized by unnecessary and costly uncertainties, delays, and interagency disputes. Their concerns were not unlike other commenters who offered observations and recommendations concerning regulatory processes.

Some commenters who represented conservation organizations cautioned against being too quick to accept or accommodate wetlands impacts caused by oil and gas development in Alaska. They expressed concern about the need to include Alaska in a national "no net loss" program or policy, and suggested that Alaska not be treated as an exception. They also pointed out that Alaskan wetlands are more similar to wetlands in the lower 48 States than they appear to be, providing benefits to fish and wildlife and to the public. In addition, they recommended against accepting the argument that the vastness of Alaska's wetlands makes disturbances caused by individual activities or facilities of the oil and gas industry insignificant and acceptable ecologically.

Several representatives of Alaskan cities stated that a strict wetlands policy further regulating the use of wetlands and waterfront property would restrict growth. For example, representatives of the city of Valdez commented that the city is in the process of addressing the protection of valuable wetlands as part of its Coastal Zone Management Program. They noted, on one hand, that protecting critical wetlands has the potential of serving the city's tourist industry and that it would preserve resources that are valuable to its residents. But the City wants flexibility in any wetlands policy for Alaska in order to help stimulate and diversify economic growth. Similarly, Anchorage's efforts to secure permits enabling the city to fill wetlands adjacent to its port to accommodate infrastructure expansion was cited as another example of where flexibility is needed.

Commenters stated that Native land ownership and the possible effects of a stringent "no net loss" policy on Alaskan Natives present an issue unique to Alaska. Alaska Native corporations have received approximately 44 million acres of land from the Federal government under the Alaska Native Land Claims Settlement Act. These lands were conveyed specifically for development purposes as partial compensation for the extinguishment of their claims to aboriginal title, and to ease the transition to a cash economy. A large part of the value of those lands and thus much of the worth of the corporations based on those lands could be lost if restrictive development policies were placed on them. Commenters stated that development on Native-owned wetlands should not

require construction of additional wetlands as mitigation if the development area is already dominated by wetlands. Furthermore, commenters felt that Native corporations should not be required to purchase wetlands in California to satisfy mitigation requirements for development on their own lands.

Commercial fishermen from Alaska urged that strong and balanced policies be developed to ensure Alaska's future and the future growth of industries such as commercial fishing. The seafood industry is Alaska's largest private basic industry, providing nearly 70,000 seasonal jobs, which translate to 33,000 direct and indirect year-round jobs. Commenters emphasized that this industry is the second largest revenue generator in the State. Commercial fishermen paid $27 million in fish taxes during 1987, and are the major contributor of marina fuel taxes. Expenditures in Alaska on goods and services in support of processing and harvesting fish are nearly $300 million annually, according to commenters.

Representatives of commercial fishing interests noted that Alaska leads the nation in value of commercial seafood landings. The 1987 harvest was worth $1.1 billion to fishermen. The wholesale value was $1.9 billion in 1987 and $3.0 billion in 1988. Fishermen stressed that Alaska's fisheries and the revenues they generate are critically dependent upon protection and wise management of wetland habitats.

C. Effects of Wetlands Protection on the Environment

Many commenters stated that application of "no net loss" of wetlands nationwide would result in a balancing of environmental enhancement and degradation. New projects would require concise documentation of environmental benefits and losses. Projects would need to be clearly justified. They felt that if regulatory programs were applied consistently, it would provide a predictable framework needed for development and also reduce environmental degradation.

Other commenters felt that converting marginal land from agricultural uses back to wetland habitats would provide positive environmental benefits and offset agricultural conversion of other wetlands to croplands. Similarly, for public works projects, marginal impoundments and impacted water bodies could be restored through abandonment or removal to create wetlands needed to offset impacts caused by other projects. Most commenters felt that more coordination must take place if restoration of old project sites is to offset environmental impacts resulting from new projects.

Issue 10. How Do We Balance the Need To Protect Wetlands Against the Potential Effects on Farmers, Businesses and Public Works Projects?

A. Balancing Effects of Wetlands Protection on Farmers

The farming community asked that the Federal Manual for Identifying and Delineating Jurisdictional Wetlands be published for comment and that an economic impact study be completed. In addition, many farmers commented that agricultural land that has been converted should be excluded from wetlands designation.

Many farmers commented that wetland protection programs should emphasize economic incentives to farmers and ranchers, rather than rely on acquisition and perpetual easements. They stressed that farmers must be represented on any appointed study commissions, State or national, that are investigating "no net loss" of wetlands. Such commissions should first develop methods for evaluating the benefits of converting individual wetlands and then apply those methods when deciding whether or not to restrict use of lands for agriculture and other purposes.

Commenters also pointed out that such commissions could develop guidelines for establishing a wetlands fund to which developers would contribute money to create, manage or develop wetlands. Funds collected would be used to restore or establish wetlands of equal or greater value than those lost. Deposits to the fund could depend on the quality of the wetlands lost.

Several respondents stated that compatible economic uses of wetlands should be encouraged rather than impeded. Balancing should allow for such uses as timber harvesting and production of native wetland crops. Many of these types of agricultural activities can be conducted in wetlands without significant loss of wetlands function. Many farmers feel that compatible agricultural programs should be encouraged and that regulatory programs that restrict and impede compatible uses should be revised. They believe that all efforts and programs must rely on voluntary and willing participants.

Some commenters stated that cooperative efforts to conserve wetlands should provide farmers with more involvement and flexibility, which would help conserve wetlands in a more balanced fashion. They felt that flexibility could be provided by permitting farmers to maintain or develop upland drainage and other rights-of-way into or across wetlands without restrictions. They stated that another example would be to allow multiple uses of wetlands, such as for watering stock, in order to help reduce the potential effects of wetlands conservation on farmers and public works projects.

Several commenters supported legislation to remove normal farming operations, including aquacultural activities on prior-converted and farmed wetlands, from the jurisdiction of the regulations governing section 404 of the Clean Water Act.

Many commenters stated they are specifically opposed to inclusion of the term "wetland" in the definition of Navigable Waters of the United States. They further oppose giving EPA final authority in matters of wetlands delineation. Farmers believe this determination should rest with the Corps of Engineers or the Soil Conservation Service.

Some farmers recommended Congress review the scope and intent of wetlands protection programs and their impacts on normal farming operations, and provide exemptions from Federal and State regulation for small wetlands.

Several commenters felt that the definition of a wetland needs to be changed to provide more fairness to them. They would like to see the following definition used: Wetlands are naturally occurring areas of predominantly hydric soils that presently support hydrophytic vegetation. Supporting definitions should be:

- "Hydric soils" are soils that are always wet enough to maintain an anaerobic condition that supports primarily hydrophytic vegetation.
- "Hydrophytic vegetation" means plants that grow in water or in soils made deficient in oxygen due to excessive water content.

Many farmers commented that regulators should exempt normal farming activities, including agriculture activities on prior-converted and farmed wetlands, from the jurisdiction of the regulations based on section 404 of the Clean Water Act. They believe this would better balance the burden of wetlands protection. They also felt that an incentive-driven program would also help balance the burden more fairly. It would provide opportunities for farmers to better serve society's goals as a whole.

Other respondents stated that the severely depleted condition of the nation's wetlands alone should provide

the answer to the question of whether or not we should trade off more of this valuable and irreplaceable natural resource to make further development possible in wetlands. They felt the need to avoid any further "net losses" should be translated into national, State and local standards for wetlands conservation that are applicable to all activities that impact wetlands. Development should only be allowed to adversely affect wetlands when impacts are offset by measures which fully replace all unavoidable impacts.

Some respondents argued that the "no net loss" goal should be treated as any other vital standard, such as for air or water quality, and no further degradation in quality or quantity should be permitted. Commenters from conservation organizations felt that compliance with such a standard should become a routine and necessary cost of doing business. Each project sponsor or beneficiary should be held responsible for off-setting its own individual impacts to wetlands.

B. Balancing the Effects of Wetland Policy on Public Works Projects

Many commenters stated that the key to achieving a proper balance between wetlands protection and the needs of the general public as they relate to public works projects is to:

- Protect wetlands that have real functional values.
- Spread the costs of protecting those wetlands over society as a whole.
- Make it easier for public works projects to use property, so long as both developmental and wetlands protection needs are identified.

Commenters stated that wetland values can be adequately protected by developers without burdening the regulated community or increasing costs to society by excluding areas that have little or no functional value from the definition of wetlands. Areas of minimal value should be readily available for public works projects and should be covered by a general permit. For wetlands of moderate value, the burden on the public works developer would be eased if the permit process were improved, with little resulting effect on wetland values. Many commenters felt that a single agency should be given the responsibility for making decisions regarding public works project applications.

Respondents suggested that a better balance between wetlands protection and economic progress could also be achieved by giving greater consideration to the public purposes served by proposed projects, especially those proposed by public agencies. For example, in order to accommodate societal goals and needs for public housing, water supplies or public schools, society may have to accept some impacts to wetlands. Some measure of compensatory mitigation was recommended for such public projects in order to minimize wetlands impacts.

Other commenters recommended area-wide planning as a means for balancing the effects of wetlands protection. Area-wide plans could identify high quality wetlands that should be avoided. They could also make it easier for projects to proceed in areas where wetland impacts are deemed acceptable, thus reducing transaction costs.

Developers of hydroelectric projects stated that wetlands policy should not be used to circumvent or incumber the Federal Power Act, or interfere with making balanced decisions about energy development. The Act accords the Federal Energy Regulatory Commission (FERC) broad control over siring, design, construction and operation of projects within FERC's jurisdiction. Commenters from the hydroelectric community recommended that Federal wetlands policy should not:

- Unreasonably promote consideration of wetlands above all other resources or otherwise interfere with FERC's ability to implement its responsibility to balance energy, economic, environmental, and other factors in licensing projects.
- Reduce the certainty of a project license by allowing subsequent modifications to approved licenses for the benefit of wetlands.
- Hamper or curtail normal maintenance and operation activities associated with power production.

C. Balancing the Effects of Wetlands Protection on Businesses

Many commenters from the business community stated that issues of equity relate to questions as to who should bear the principal burden of a national wetlands program. The question of balance is not only one of public versus private costs, but also one of relative costs to be borne by different private business projects that affect wetland resources. The business community believes that the benefits attributed to wetlands accrue principally to the general public but that current policies and programs assign much of the costs of protecting or providing those benefits to businesses and the private sector. A national wetlands policy must consider the appropriate roles of all levels of government, the potential impact of such a policy on the economy, and the costs that should be borne by the private sector, businesses, and the public. Mechanisms that should be considered to achieve fairness include mitigation banking, as an option for private developers; tax exempt wetlands trusts; compensation to businesses where regulations infringe on traditional property rights; and government cost-sharing with the business community. These mechanisms should be available when benefits obtained from wetlands conservation are significant nationally or regionally.

Many commenters felt that the best way to balance the needs for wetlands protection and development is to establish a national inventory of priority wetlands. This would be similar to the advanced identification of wetlands under section 230.60 of the section 404(b)(1) Guidelines. It would assist the public in identifying areas unsuitable for development and other areas acceptable as fill sites. Such a practice would not mean that wetlands identified as possible future disposal sites would be "written off" for development. It would simply notify developers about areas in which they would be unlikely to receive permits.

Some respondents expressed concerns that government needs to establish meaningful conservation incentives for landowners; incentives are critical in order to balance the impacts of wetlands conservation on businesses. In areas where no development would be allowed to take place, developers should be fairly compensated for their losses. Commenters emphasized that the Federal government should recognize its fiscal responsibility in protecting wetlands, instead of passing the financial burden of conservation onto the private landowner.

Many individuals and conservation organizations commented that the country needs to balance the need to protect wetlands against the potential adverse economic effects of conservation on farmers, businesses, and public works projects. While many of these commenters recognized the fact that the nation has already lost over half its wetlands in the lower forty-eight States, they stressed the need to reconcile the interests of individuals, businesses, and public projects with wetlands protection. They recommended coordination among conservationists and wetland users at the local, regional, State and Federal levels to achieve this goal. Without development of land use and conservation plans, and development of a wetlands policy that is the product of consensus at many levels, they felt it

will be impossible to adequately assess the effects of wetlands conservation on individuals and public projects.

One respondent cited statistics from the National Marine Fisheries Service (NMFS) that provide evidence of the economic impacts of the cumulative loss of wetlands. NMFS estimates that coastal wetland losses in the continental United States cost the commercial fisheries industry $208 million annually. Commercial fisheries for species that depend on coastal wetlands contributed over $7 billion to the nation's Gross National Product in 1987.

Conservation groups and many individuals provided a perspective on balancing development and wetland protection economic needs that differs markedly from views expressed by many agricultural and commercial respondents. One commenter cited estimates that between fifty and eighty percent of Oregon's intertidal wetlands have been lost to diking activities by farmers. The commenter felt that it may not be reasonable to forgo more of this wetlands resource and its attendant fisheries values simply to increase agricultural production. The commenter pointed out that the wetlands "conflict" does not appear to stem from marshes displacing agricultural interests, but rather from those interests displacing marshes.

Issue 11. What Research or Data Collection Is Necessary in Working Toward the "No Net Loss" Goal?

There were few detailed responses to this question, especially concerning research. However, some commenters pointed out the need for a rapid completion of wetlands mapping nationwide. Many commenters suggested that mapping efforts be expanded to include site-specific information on wetlands functions and values. Some commenters felt this could be done easily and quickly by increasing funding of the National Wetland Inventory project.

There was considerable disagreement, as reflected throughout this summary, regarding the technical definition of a wetland. Additional research on the definition of wetlands, and how this definition may vary among various regions of the country, was urged by several commenters. A majority of commenters who addressed wetlands restoration and creation highlighted the need for expanded research in this area. A number of commenters endorsed research recommendations made by the National Wetlands Policy Forum, including initiation of a national data bank.

A. Research Needed

Many comments emphasized the need for a thorough understanding of how wetlands function. Specific suggestions included:

- Develop quantitative measures of wetlands and ecosystem functional values, including primary and secondary productivity, nutrient cycling and diversity.
- Use the Classification of Wetlands and Deepwater Habitats of the United States (Cowardin et al. 1979) to understand interdependence of various wetland systems.
- Initiate long-term research on wetland restoration and creation, including establishment of reference sites for major wetland types, and experimental sites where the success or failure of specific restoration and creation techniques could be tested. Identify techniques that succeed and the reasons why.
- Identify and evaluate economic benefits provided by wetlands. Develop quantitative measures for determining the economic values of wetlands.
- Develop a national data base to house and provide current information about the location and acreage of all wetlands.
- Identify forestry practices that are compatible with wetland functions.
- Conduct studies on different types of wetlands to improve understanding of their ecological structure, functions, and values. Emphasize research in Alaska, Western drylands and riparian habitats, and artificial wetlands, particularly those created unintentionally.

B. Information Needed

The majority of respondents emphasized the need for wetlands maps. Products produced by the National Wetlands Inventory project were recognized as very valuable and helpful by many commenters. The need for other wetland data was also emphasized. Respondents stressed that maps and other information needs to be accessible to decision-makers and landowners. An evaluation of the effects of Swampbuster programs was suggested by one commenter.

Issue 12. How Should the Federal Government Manage Its Wetlands? How Should the Existence of Wetlands Be Addressed Prior to Disposal of Federal Properties?

A. Federal Management

Two broad recommendations were submitted by respondents. One was that Federal lands should be managed under the same restrictions and permitting requirements as private lands. The Federal government should take the lead in assuring strict compliance with all legal and regulatory requirements. Second, Federal wetlands should be carefully managed to assure long-term productivity, with emphasis on ecological diversity. Commenters stressed that this should include an in-depth inventory of all Federal wetlands, which should include details on the functions and values of each.

Additional specific recommendations included:

- Prioritize wetlands by region, State and watershed.
- Manage Federal wetlands in a manner that does not interfere with private and public water rights.
- Manage wetlands on Federal properties for uses compatible with wetlands conservation, such as silviculture, hunting, fishing, trapping, and general outdoor recreation. This should be part of a scientifically-sound program of land management.
- Restore lost or degraded wetlands.
- Work cooperatively with States, Tribes, and regional and local governments.
- Manage to prevent animal and plant "pest" species, such as weeds and mosquitos, from becoming nuisances on adjacent private lands.
- Use fees generated from leasing Federal wetlands to private individuals as a means of supporting wetlands conservation efforts elsewhere.
- Require all Federal land management agencies to use the Federal Manual for Identifying and Delineating Jurisdictional Wetlands in identifying wetlands they manage.
- Require Department of Transportation (DOT) to fund efforts to inventory and manage wetlands acquired by the State DOTs.
- Manage Federal properties for a net gain in wetland acreage and quality.

B. Disposal of Properties Having Wetlands

The consistent recommendation of commenters on this subject was that when Federal property containing wetlands is sold, permanent easements protecting those wetlands should be retained. Specific recommendations included:

- Ensure there is a uniform Federal policy concerning wetland easements. Federal properties that are eligible for sale or disposal should be inventoried to identify wetlands.
- Consider land exchanges for the purpose of conserving wetlands.
- Make certain that properties held by Farmer's Home Administration (FmHA) and the Resolution Trust

Corporation (RTC) are not resold without wetland easements.

- Coordinate disposal of properties with State wildlife agencies, to allow for acquisition or management of easements.
- Provide for easements that allow compatible uses such as forestry.
- Require alternative economic analyses before placing Federal properties on the market.

Issue 13. What Can Be Done To Encourage Public Awareness of the Value of Wetlands?

This question received limited response, primarily from organizations providing detailed comment on all of the questions. There was general agreement that expanded public awareness is important. The importance of education programs in public schools was stressed. At the university level, there was a recommendation for a cooperative extension program to teach wetland values. One commenter stressed the need to greatly expand education opportunities at the university level. Efforts should focus on individuals interested in wetlands and specifically in wetlands restoration. He stressed that there will be a great need and great opportunities for individuals skilled in restoration ecology.

Another commenter offered examples of education programs that have been effective in teaching young people the importance of natural ecosystems, such as wetlands. These include "Project Learning Tree" and "Project Wild." It was also suggested that young people in urban settings, who have the least opportunity to become familiar with wetlands first-hand, should be a special focus of public outreach programs. Hands on opportunities and field trips were viewed as very helpful.

A number of responses emphasized the need to provide more information to individuals most affected by wetlands conservation policies and programs, particularly permittees and regulators. A few commenters felt that the general public is already adequately aware of the controversy surrounding wetlands conservation. However, there was a difference of opinion about how well they understood issues underlying the controversy. Commenters also pointed out that it is difficult for the general public to understand problems and values associated with wetlands when agencies regulating them do not appear in agreement. Industry stressed the need to focus on recognizable wetlands in educating the public about the values and problems of wetlands management and protection.

A basic problem identified by several commenters is the difficulty of establishing wetlands educational programs when there is little agreement on the definition of wetlands, their values, and the importance ecologically and economically. There were several suggestions for establishing a National Wetlands Information Center to address this problem.

One suggestion was to use Executive Order 11990 to require all Federal agencies to develop public information programs.

References Cited

The Conservation Foundation. 1988. Protecting America's Wetlands: An Action Agenda. The Final Report of the National Wetlands Policy Forum. The Conservation Foundation, Washington DC. 69 pp.

Cowardin, L.M., V. Carter, F.C. Golet and E.T. LaRoe. 1979. Classification of Wetlands and Deepwater Habitats of the United States. U.S. Fish and Wildlife Service, Washington, DC, Publ. No FWS/OBS-79/31. 103 pp.

Federal Interagency Committee for Wetland Delineation. 1989. Federal Manual for Identifying and Delineating Jurisdictional Wetlands. U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, and U.S.D.A. Soil Conservation Service, Washington DC, Cooperative Technical Publication. 76 pp. plus appendices.

Southeastern Virginia Planning District Commission. 1990. Economic Implications of Wetlands Regulations in Southeastern Virginia. Southeastern Virginia Planning District Commission, Hampton Roads.

Dated: February 21, 1991.

June M. Whelan,

Deputy Assistant Secretary for Fish, Wildlife and Parks.

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federal register

Thursday
February 28, 1991

Part VI

Equal Employment Opportunity Commission

29 CFR Part 1630

Equal Employment Opportunity for Individuals With Disabilities; Notice of Proposed Rulemaking

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1630

Equal Employment Opportunity for Individuals With Disabilities

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On July 26, 1990, the Americans with Disabilities Act (ADA) was signed into law. Section 106 of the ADA requires that the Equal Employment Opportunity Commission (EEOC) issue substantive regulations implementing title I (Employment) within one year of the date of enactment of the Act. Pursuant to this mandate the Commission is publishing a proposed new part 1630 to its regulations to implement title I and sections 3(2), 3(3), 501, 503, 508, 510 and 511 of the ADA as those sections pertain to employment. These regulations prohibit discrimination against qualified individuals with disabilities in all aspects of employment.

DATES: To be assured of consideration, comments must be in writing and must be received on or before April 29, 1991. The Commission will consider any comments received on or before the closing date and thereafter adopt final regulations. Comments that are received after the closing date will be considered to the extent practicable.

ADDRESSES: Written comments should be submitted to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 1801 "L" Street NW., Washington, DC 20507.

As a convenience to commenters, the Executive Secretariat will accept public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 663–4114. (This is not a toll-free number). Only public comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary in order to assure access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat Staff at (202) 663–4078. (This is not a toll-free number).

Comments received will be available for public inspection in the EEOC Library, room 6502, by appointment only, from 9 a.m. to 5 p.m., Monday through Friday except legal holidays, from March 14, 1991, until the Commission publishes the rule in final form. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. To schedule an appointment call (202) 663–4630 (voice), (202) 663–4630 (TDD).

Copies of this notice of proposed rulemaking are available in the following alternate formats: large print, braille, electronic file on computer disk, and audio-tape. Copies may be obtained from the Office of Equal Employment Opportunity by calling (202) 663–4395 (voice) or (202) 663–4399 (TDD).

FOR FURTHER INFORMATION CONTACT: Elizabeth M. Thornton, Deputy Legal Counsel, (202) 663–4638 (voice), (202) 663–7026 (TDD).

SUPPLEMENTARY INFORMATION: The Commission actively solicited and considered public comment in the development of proposed part 1630. On August 1, 1990, the Commission published an advance notice of proposed rulemaking (ANPRM), 55 FR 31192, informing the public that the Commission had begun the process of developing substantive regulations pursuant to title I of the ADA and inviting comment from interested groups and individuals. The comment period ended on August 31, 1990. In response to the ANPRM, the Commission received 138 comments from various disability rights organizations, employer groups, and individuals. Comments were also solicited at 62 ADA input meetings conducted by Commission field offices throughout the country. More than 2400 representatives from disability rights organizations and employer groups participated in these meetings.

The format of the regulations reflects congressional intent, as expressed in the legislative history, that the regulations implementing the employment provisions of the ADA be modeled on the regulations implementing section 504 of the Rehabilitation Act of 1973, as amended, 34 CFR part 104. Accordingly, in developing these regulations, the Commission has been guided by the section 504 regulations and the case law interpreting those regulations.

It is the intent of Congress that these regulations be comprehensive and easily understood. Proposed part 1630, therefore, defines terms not previously defined in the regulations implementing section 504 of the Rehabilitation Act, such as "substantially limits," "essential functions," and "reasonable accommodation." Of necessity, many of the determinations that may be required by this proposed part must be made on a case by case basis. Where possible the regulations establish parameters to serve as guidelines in such inquiries.

The Commission is also issuing interpretive guidance concurrently with the issuance of part 1630 in order to ensure that qualified individuals with disabilities understand their rights under these regulations and to facilitate and encourage compliance by covered entities. Therefore, proposed part 1630 is accompanied by a proposed appendix. This proposed appendix represents the Commission's interpretation of the issues discussed and the Commission will be guided by it when resolving charges of employment discrimination. The proposed Appendix addresses the major provisions of the regulations and explains the major concepts of disability rights.

One especially complex area for which the Commission has attempted to provide additional definitions and parameters involves the question of how to determine whether an employer regards a particular individual as having an impairment that substantially limits the major life activity of working. This question arises only when the individual is being regarded as substantially limited in working as opposed to substantially limited in any of his or her other major life activities. Also, it does not apply when an individual has an actual disability, or has a record of being an individual with a disability. The Commission has proposed, in the appendix to part 1630, that an employer be considered to regard an individual as substantially limited in the major life activity of working if the employer's qualification standard excluding individuals with a particular impairment, would, if assumed to be generally applied by employers facing comparable hiring decisions, exclude the individual from a class of jobs or from a broad range of jobs in various classes. The Commission invites specific comment on this proposal.

More detailed guidance on specific issues will be forthcoming in the Commission's Compliance Manual. Several Compliance Manual sections and policy guidances on ADA issues are currently under development and are expected to be issued prior to the effective date of the Act. Among the issues to be addressed in depth are the theories of discrimination; definitions of disability and of qualified individual with a disability; reasonable accommodation and undue hardship, including such matters as the scope of reassignment and supported employment; and pre-employment inquiries.

To assist us in developing this guidance, the Commission requests comment from disability rights organizations, employers, unions, State agencies concerned with employment or worker's compensation practices, and interested individuals on the following specific questions concerning the application of Title I of the ADA.

Insurance

1. What are the current risk assessment or classification practices with respect to health and life insurance coverage in the area of employment?
2. Must risk assessment or classification be based on actuarial statistics?
3. What is the relationship between "risk" and "cost?"
4. Must an employer or insurance company consider the effect on individuals with disabilities before making cost saving changes in its insurance coverage?

Worker's Compensation

1. Is submission of medical information to worker's compensation offices a permissible use of information obtained as a result of a medical examination or inquiry?
2. Is an inquiry into the history of an individual's worker's compensation claims a prohibited pre-employment inquiry? Is such an inquiry ever permissible as an inquiry that is job-related and consistent with business necessity?
3. What has been the experience of federal contractors subject to section 503 of the Rehabilitation Act with respect to State worker's compensation requirements?

Collective Bargaining Agreements

1. Can the effect of a particular accommodation on the provisions of a collective bargaining agreement ever be considered an undue hardship? For example, may an employer decline to restructure a job or refuse to grant light duty because to do so would violate seniority or other provisions of the collective bargaining agreement?
2. What is the relationship between collective bargaining agreements and the accommodation of reassignment to a vacant position?
3. Should a position be considered "vacant" when the employer has other obligations, such as consent decrees or arbitration agreements, with respect to filling the position?
4. If a necessary reasonable accommodation is challenged as a violation of a collective bargaining agreement, would the employer or union violate the confidentiality requirements of the ADA by explaining that the accommodation was made to comply with the ADA?

Executive Order 12291 and Regulatory Flexibility Act

The Commission has determined that this proposed rule will not exceed the threshold level of $100 million and thus is not a major rule for the purposes of Executive Order 12291. In making this determination the Commission prepared a Preliminary Regulatory Impact Analysis. The text of the Analysis appears below.

The Commission certifies that this proposed rule will not have a significant economic impact on a substantial number of small business entities. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

Preliminary Regulatory Impact Analysis

Executive Summary

The following analysis estimates three economic effects likely to result from the regulation implementing Title I of the Americans with Disabilities Act. Reasonable accommodation expenses are estimated at approximately $16 million, productivity gains are estimated at more than $164 million and decreased support payments and increased tax revenue is estimated at about $222 million. Lost benefits of not promulgating the rule could exceed $400 million.

It appears that the rule is unlikely to have a significant economic impact on smaller entities. Because small entities employ fewer workers, the chance that an individual small business will be required to take reasonable accommodation is quite low. Further, the availability of tax credits, the two-year exemption period and the lack of reporting requirements all reduce the economic effect of the rule on these firms.

Introduction

The Equal Employment Opportunity Commission (EEOC) has drafted regulations to implement title I of the Americans with Disabilities Act (ADA), requiring equal employment opportunity for qualified individuals with disabilities, and sections 3(2), 3(3), 501, 503, 508, 510, and 511 of the ADA as those sections pertain to the employment of qualified individuals with disabilities. The Commission is required by the ADA to issue regulations to enforce Title I within one year of the date of enactment. The regulation raises no issues for discretionary rulemaking. Title I of the ADA is an unusual statute in that it contains a level of detail more commonly found in regulations, leaving very little room for regulatory discretion, and thus limits regulatory costs to those preset by the Congress in its choice of statutory requirements. The regulation merely explains and provides guidance on the statutory requirements by relying primarily on existing case law,[1] which is another limitation on Commission discretion in constructing the regulation.

The purpose of this preliminary regulatory impact analysis is to determine the costs and benefits of the proposed rule as required by Executive Order 12291, 46 FR 131391 (1981). This preliminary analysis suffers from a number of constraints. The ADA establishes very stringent time frames for developing implementing regulations. The limited time available necessitates the use of very rough estimates that can readily be drawn from existing literature. Additionally, a lack of regulatory alternatives available to the Commission and a scarcity of data relevant to the regulation at hand prevent this analysis from being an ideal application of cost benefit analysis. Even more limiting is the lack of a clear definition of costs associated with the rule as benefits, costs or simply transfers. Nevertheless, this analysis will address the five areas proscribed as necessary elements of a regulatory impact analysis by the Office of Management and Budget.[2] These areas are: (1) Statement of potential need for the proposal, (2) an examination of alternative approaches, (3) an analysis of benefits and costs, (4) rationale for choosing the proposed regulatory action, and (5) a statement of statutory authority. Also included in the final section of this preliminary regulatory impact analysis is a regulatory flexibility analysis.

Background

On July 26, 1990, the ADA was signed into law. The Commission invited public comment on the development of regulations through the publication of an advanced notice of proposed rulemaking on August 1, 1990. As directed by the legislative history, the regulations are modeled on those implementing section 504 of the Rehabilitation Act of 1973, as amended, 34 CFR part 104. Substantively, the regulations parallel

[1] Case law is a result of experiences encountered in implementing the Rehabilitation Act of 1973.

[2] "Appendix V, Regulatory Impact Analysis Guidance", *Regulatory Program of the United States Government, April 1, 1990–March 31, 1991*, The Executive Office of the President, Office of Management and Budget, pp. 653–666.

the act. Succinctly stated, the act and the regulations prohibit employers from discriminating in employment decisions against qualified individuals with disabilities. This includes the requirement that employers make reasonable accommodation to known physical or mental limitations of an otherwise qualified applicant or employee with a disability, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of its business. There are certain economic effects expected as a result of title I: (1) Reasonable accommodation expenses, (2) reduction of social welfare payments and an increase in tax revenues, and (3) increased labor productivity. As will be discussed, these costs can be viewed as being positive (benefits), negative (costs) or neutral (transfers). Government administrative costs in implementing Title I could also be considered an economic effect.

Statement of Potential Need for the Proposal

Beyond the legislative requirements for the regulations, Office of Management and Budget (OMB) guidance requires regulatory impact analyses to establish the potential need for a proposal by demonstrating that "(a) market failure exists that is (b) not adequately resolved by measures other than Federal regulation."[3] The labor market failures at issue here include those addressed by other equal employment opportunity requirements. These failures have been explained in three different ways in the seminal works of Becker, Thurow and Arrow. These works originally addressed race discrimination but they are applicable to discrimination against disabled workers.[4] Becker treats discrimination as a commodity in which employers, co-workers and consumers all have to determine their discrimination coefficient, that is, their taste for discrimination or how much discrimination will affect their utility.[5] Here the market failure is the substitution of a human capital factor (that is, a qualification for or contributor to labor productivity) with factors unrelated to productivity, such as race, sex, or disability. Becker indicates that individuals and firms are willing to accept the reduced productivity arising from using such factors because they prefer not to be associated (due to uncomfortableness or displeasure) with blacks, women or disabled workers in the work place. Becker's general theorem on market discrimination assumes that all employees in a given market are either perfect substitutes or perfect complements. Discrimination by employers converts minority or female wage rates into a net wage rate with the added costs of discrimination. The discrimination cost adds to the actual wage rate by adding costs from employees, customers, unions and others who prefer not to associate with certain classes of individuals. This cost of discrimination makes the black, female, or disabled worker more expensive to the firm and therefore stimulates the employer to discriminate in wages or to fail to hire these individuals. The effect on the labor market is that it artificially constricts the labor pool and allows a non-human capital factor to be considered in labor decisions, thus reducing gross productivity.

Thurow relies strongly on the marginal productivity theory in labor economics.[6] The author explains that in studying discrimination, the important source of income is individual labor. Labor income is determined by labor's marginal productivity, its contribution to the firm's production. Firms are expected to set labor costs equal to labor's marginal productivity. As productivity increases, income should increase. In explaining employment discrimination, Thurow rejects Becker's notion of tastes for discrimination. Instead he sees the discriminator as a profit maximizer. Given a situation where firms pay black, female, ethnic or disabled workers less for comparable work, Becker would suggest that a portion of these workers' marginal productivity must go to buy off discrimination tastes. Thurow would argue that it occurs because the firm knows it can use that portion of a black, female, ethnic or disabled worker's marginal productivity as profit. Thurow's theory has limited applicability to hiring discrimination because if firms were able to capture wage disparities as profits, they would place a greater demand on these workers. This seems to be a particular weakness with respect to disabled workers because of the high rate of disabled unemployment. Nevertheless, Thurow provides a theoretical basis for observed wage disparities between equally qualified disabled and non-disabled workers. Thurow's theory also points out another market failure having to do with human capital. Although Thurow's theory could not create an artificially constricted labor market, as Becker's theory does, it would reduce returns on human capital investments for certain workers.[7] As a result, disabled workers (and others that are discriminated against in the manner described by Thurow) would be less willing and less able to make human capital investments. This will result in a less qualified work force than would be expected in a perfectly competitive market. This again can have serious national productivity effects.

Arrow, like Becker, operates from an assumption that disparities between black and white employment (and in the present instance, disabled and non-disabled employment) are caused in part by discriminatory tastes, and that these discriminatory tastes have a certain utility for an employer and for the actors in an economy such as complementary workers.[8] However, Arrow concludes that, if Becker's model is correct, in the long run the likely outcome or equilibrium point would be perfectly segregated labor pools and no disparity in wages. Noting that this condition cannot be observed in reality, he offers an alternative explanation: Imperfect information. Employers, according to Arrow's theory, may have a preconceived notion that black workers (or in this case, disabled workers) are less productive than white (or non-disabled) workers and will reduce black wages or employment opportunities accordingly. Arrow notes that in making employment decisions, an employer seeks information about candidates and this information has varying costs. Some information such as race, sex, ethnicity or disability status is particularly cheap, as the employer can usually observe these traits. In many instances the employer uses this cheap (and irrelevant) information to predict performance. The employer is able to do this and not have a disadvantage in the

[3] "Appendix V, Regulatory Impact Analysis Guidance", Regulatory Program of the United States Government, April 1, 1990–March 31, 1991, The Executive Office of the President, Office of Management and Budget, p. 653.

[4] The term "disabled worker" is used to refer to applicants and employees covered by the act. It is not intended to be a legal term but is simply a term of convenience for this analysis.

[5] Becker, Gary S. The Economics of Discrimination, The University of Chicago Press, 1957

[6] Thurow, Lester C. Poverty and Discrimination, The Brookings Institute, Washington, DC, 1969.

[7] Such human capital investments would include education and training. For a detailed discussion of human capital theory see, Mincer, Jacob, Schooling, Experience and Earnings, National Bureau of Economic Research, New York, 1974.

[8] Arrow, Kenneth J. Arrow, "The Theory of Discrimination", Discrimination in Labor Markets, edited by Orley Ashenfelter and Albert Rees, Princeton University Press, Princeton, New Jersey, 1973, pp. 3–33.

market because other employers also use this cheap information and because the market is sufficiently noncompetitive as to allow the use of such inefficient information. By using the cheap information (race, sex, ethnicity, and/or disability), the employer saves money in the short run and ignores the long run productivity losses. This, of course, imposes a cost on society in the form of lost productivity that stems from the use of a less competitive labor market.

Burkhauser and Haveman indicate that there are other market failure rationales for government policy in the disability area.[9] Three market failures are offered by the authors as general justification for government intervention. Burkhauser and Haveman view these three market failures as externalities. The first externality occurs, according to the authors, because when an individual becomes impaired, the costs of impairment become shared. Under this condition then one can view the welfare payments received by disabled workers as a type of externality and the reduction in these benefits caused by equal employment requirements will result in a decrease in this externality. While in some circumstances, such welfare payments may be viewed as a transfer, it is appropriate to view the reduction of the payments as a benefit as individuals become more responsible for the cost of their impairments and the externality is reduced. Expressed in another manner, the individual's income becomes more directly related to his/her productivity.

The second externality cited by these authors is relevant to the need to provide support for these individuals. In explaining this market failure, the authors point out that the amount individuals are willing to contribute to provide support is likely to depend on the contributions by others and an optimal level of support is not reached. This occurs as even individuals who prefer providing support will attempt to avoid such payments by taking a "free ride" on the contributions of others. The ADA's reasonable accommodation requirement might be viewed in this light. This requirement fixes the cost and eliminates the "free rider" problem. By selecting the employer to bear the cost the responsibility is fixed on the individual that receives the benefits of the disabled worker's productivity, thus approaching a more competitive market place. Ideally, however, the employee would be expected to bear such costs. This brings us to the third externality cited by these authors. This problem stems from the fact that disabled workers are constrained in financing investments in human capital which are frequently reflected in reasonable accommodation, for example, the purchase of a TDD by a hearing impaired individual. The authors point out that due to the lack of economic well-being among disabled workers such investments by these workers are likely to be less than optimal. Transferring the cost to the employer through government intervention is more likely to produce the optimal investment.

Burkhauser and Haveman's view of disability as an externality raises a number of issues for calculating the cost benefit of the Title I regulations. Their view indicates that welfare disability payments can be viewed as an externality that forces others to share in the cost of an individual's disability. Analysts often view such payments as transfers. Instead, it may be possible to view the reduction of such payments as a social benefit reflecting the ability to have individuals bear the costs of their own disabilities. Also their view can be used to argue that at a certain level reasonable accommodation costs are simply pecuniary as employers bear human capital investment costs rather than the disabled worker. By having the employer, who is more sound financially, bear the costs, investments will be more optimal. Therefore, the reasonable accommodation costs which are required by title I can be viewed as those that would not be taken voluntarily by the disabled worker due to financial constraints and all such costs could be viewed as benefits. Viewing disability as an externality, changes the way that many researchers have defined costs and benefits of requiring equal employment opportunity for disabled workers. Traditionally, one would normally view the reduction in social welfare payments as a transfer rather than a benefit and one would view reasonable accommodation as a cost rather than a transfer with some benefits. As it is necessary to rely on prior studies to provide estimates of costs and benefits, Burkhauser and Haveman's view of market failures raises issues that cannot be readily resolved. This makes the calculation of a cost benefit ratio difficult as there is no clear consensus on what factors are benefits and which are costs. Rather than calculate a cost benefit ratio, it will be much more valuable to simply outline regulatory costs with the recognition that these costs will be viewed as positive (benefits), as negative (costs), and as neutral (transfers) but with no definitive consistency in this view.

If the market failures, outlined above, exist, we might expect to see them reflected in disabled workers having lower employment status than similarly qualified non-disabled workers. Haveman and Wolfe make such a finding with respect to wages.[10] These authors calculate the ratio of real earnings of disabled to non-disabled males controlling for age (a proxy for experience), years of education and race. For example, in 1984, disabled workers with 13 or more years of education earned only 71 percent of the earnings of a non-disabled worker with that amount of education. The disparities were even greater when educational levels were lower. Disabled workers with less than 12 years of education earned less than one-third of that earned by non-disabled workers with less than 12 years of education. Similarly, a study by Johnson and Lambrinos indicates that 35 percent of the difference between disabled and non-disabled workers' wages is due to discrimination.[11]

Unemployment rates also reflect the lower employment status of the disabled, that would be expected particularly from Becker and Arrow's theories. The Congressional Research Service, using a 1978 Social Security Administration survey, reports that disabled men in the work force had an unemployment rate of 5.8 percent, in contrast to 3.5 percent for non-disabled men. Disabled women had an unemployment rate of 9.0 percent compared to 5.9 percent for non-disabled women.[12] Even these disparities do not completely capture the extent of unemployment, as disabled workers have been historically excluded from the work force. A Lou Harris poll found that two-thirds of disabled Americans between ages 16 and 64 are not working. Sixty-six percent of those not working say that they would like to work.[13]

[9] Burkhauser, Richard V. and Robert H. Haveman, Disability and Work: the Economics of American Policy, The Johns Hopkins University Press, 1982, pp. 18–22.

[10] Haveman, Robert and Barbara Wolfe, "The Economic Well-Being of the Disabled, 1962–1984", *The Journal of Human Resources*, Vol. 25 No. 1, 1990, pp. 32–54.

[11] Johnson, William G. and James Lambrinos, "Employment Discrimination", Society, March/April 1983, pp. 47–50.

[12] Digest of Data on Persons with Disabilities, Congressional Research Service, June 1984.

[13] The ICD Survey of Disabled Americans, Bringing Disabled Americans Into Mainstream, a Nationwide Survey of the 1,000 Disabled People, ICD-International Center for the Disabled and Lou Harris and Associates, Ind., 1986.

In conclusion, discrimination against disabled individuals can be viewed, like discrimination against minorities and women, as a market failure due to a taste for discrimination, short run profit maximizing, and/or use of imperfect information. It can also be viewed as an externality where others pay for the cost of an individual's disability, which becomes particularly problematic without government intervention because optimal investments in human capital (including accommodations) are not made. The effect of this failure is a reduction in national productivity that stems from use of a constricted labor market, failure to accurately return investments on human capital, failure to make optimal investments in human capital and/or use of imperfect information to predict productivity. Additionally, all theories of discrimination recognized that society suffers when there is an inequitable work force.

An Examination of Alternative Approaches

The regulation implementing the ADA represents a direct adoption of statutory requirements. Little leeway is seen for discretionary rulemaking and hence regulatory alternatives. To demonstrate this limitation, it is useful to briefly examine the seven different regulatory alternatives recommended by the regulatory impact analysis guidance.[14] The first alternative is the use of performance-oriented standards. While these types of standards have been shown to be useful alternatives for environmental regulation, they probably have limited utility in this area due to, among other factors, equity considerations for both disabled and non-disabled individuals.

The second type of alternative recommended in the regulatory impact analysis guidance is to impose different requirements for different segments of the regulated population. This is not a viable alternative for the subject regulation, as the rule represents a bare minimum compliance standard. Under somewhat similar regulations, like section 503 of the Rehabilitation Act of 1973, there are differing standards based on the value of the employer's Federal contracts. With more extensive compliance requirements like affirmative action programs, it is possible to have greater variation in regulatory requirements such as only requiring employers with large contracts to have written plans. This type of gradation is not possible with a simple nondiscrimination requirement and the Commission is not given this authority in the ADA.

The third type of requirement recommended is alternative level of stringency. This type of regulation is not appropriate to the current rule for a number of reasons. First, the Act specifies level of stringency. Second, unlike pollution or risk in occupational safety, it is difficult to have little or to have much nondiscrimination. Third, even if graduated discrimination standards could be developed, it would result in the denial of individual rights to certain employees. Such a denial is certain to be tested in the courts, imposing significant costs on the government.

The fourth alternative is variation of effective dates of compliance. This has already been addressed in the Act. Any further variation would be confusing to the public and might also be challenged through litigation.

The fifth alternative is alternative methods of ensuring compliance. The proposed regulation makes no assumptions about methods of ensuring compliance. Considering that the statute is new and the Commission has no experience in implementing the Act, it is not reasonable at this time to develop, through regulation, alternative compliance techniques.

The sixth alternative is to provide informational measures. This is a viable approach, given that one of the cited market failures creating the need for the regulation is the use of imperfect information by employers. Additionally, the employer will have information needs when determining appropriate types of reasonable accommodation. Unfortunately, neither of these information needs is well met by government intervention. The employer is much more capable of determining the information needed to make personnel decisions. Given a prohibition against using cheap discriminatory information like an individual's disability, the employer will be best able to determine the most cost effective alternatives. With respect to information regarding reasonable accommodation, since accommodations are tailored to the individual, the most cost effective manner for designing them is information exchange between employee and employer. Increased information regarding reasonable accommodation solutions will both increase compliance and reduce compliance costs. It should be noted that information can be provided by the government and can aid employers' compliance efforts. The ADA imposes such a requirement on the Commission. The Commission will provide technical assistance to employers and general information through a variety of activities, including the development of a technical assistance manual, participation in conferences and the publication of booklets and brochures.

The seventh alternative is to create more market-oriented approaches. This alternative is difficult to apply to equal employment opportunity requirements, as the buying and selling of individual rights is different than the buying and selling of tax deductions or pollution rights. Some incentives, however, through tax credits and tax deductions related to the Act, are available and will be discussed in a later section.

Faced with a scarcity of alternatives, relevant guidance has been provided.

Ordinarily, one of the alternatives will be to promulgate no regulation at all, and this alternative will commonly serve as a base from which increments in benefits and costs are calculated for the other alternatives. Even if alternatives such as no regulation are not permissible statutorily, it is often desirable to evaluate the benefits and costs of such alternatives to determine if statutory change would be desirable.[15]

Therefore the two alternatives to be examined in this analysis are the proposed regulation and no regulation.[16]

Reasonable Accommodation Expenses

The title I substantive regulations contain compliance but not reporting requirements. Of compliance requirements, the cost borne by employers is reflected in their provision of reasonable accommodation. However, as the prior discussion of market failures indicates, it is not clear whether these costs should be viewed as positive or negative costs. While traditionally viewed as negative costs, Burkhauser and Haveman's perception that disability is an externality would make reasonable accommodation expenses a benefit. Nevertheless, there is rather abundant literature indicating

[14] "Appendix V, Regulatory Impact Analysis Guidance", Regulatory Program of the United States Government, April 1, 1990–March 31, 1991, The Executive Office of the President, Office of Management and Budget.

[15] "Appendix V, Regulatory Impact Analysis Guidance", Regulatory Program of the United States Government, April 1, 1990–March 31, 1991, The Executive Office of the President, Office of Management and Budget, p. 656.

[16] Because the alternative of no regulation appears to be intended, by OMB, to serve as a base for comparing regulatory alternatives, no regulation will be treated as if there was no legislation. While Title I of the ADA could be implemented without regulations, treating no regulation as no legislation will provide the most useful contrast. Additionally the effect of this alternative is more readily computed when viewed in this manner.

that accommodation expenses are normally quite low. The literature comes from a wide array of sources. For example, an official charged with implementing section 503 of the Rehabilitation Act noted that "there really is not any great cost attached to making accommodations." [17] A major corporation reported that "The cost of most accommodations is nominal".[18]

The basic method to estimate the economic cost of reasonable accommodation is to multiply the expected number of accommodations by the expected cost of accommodations. Four variables are needed to estimate number and cost of accommodations: the expected proportion of employment opportunities to be gained by disabled workers, the number of employees covered, the average cost of accommodation, and turnover rates.

The expected proportion of employment opportunities to be gained by disabled workers is critical in determining the number of accommodations expected. Given some knowledge of relevant employment opportunities, this figure will indicate the number of opportunities that disabled workers would be expected to receive. Availability estimates of disabled workers range from 1.1 percent to 10 percent. The Digest of Data on Persons with Disabilities uses Social Security Administration data reports to estimate that 10 percent of those 18 to 64 years old who participate in the labor force are disabled.[19] The much lower estimated of 1.1 percent availability represents that proportion of the federal work force having targeted disabilities.[20] The 10 percent availability figure is only appropriate if immediate and total compliance is expected. That is, as soon as the regulations are implemented, employers begin filling job vacancies with disabled workers at the same rate as these workers are available for employment (10 percent according to the estimate above). As few regulations ever achieve immediate and total compliance, it is useful to introduce another estimate that accounts for experience in compliance behavior. The 1.1 percent estimate reflecting compliance of federal agencies may not be appropriate, as it is limited to targeted disabilities, is from a relatively unique labor market and also represents an extreme estimate. In its place, an estimate of the employment of disabled workers by federal contractors subject to Section 503 of the Rehabilitation Act can be used. A 1982 study conducted for the Department of Labor found that 3.5 percent of federal contractors' work forces were disabled. Note that this figure was reached nearly ten years after federal contractors were subject to Section 503.

The number of employees covered by title I is another variable necessary to estimate the number of expected accommodations. The impact of title I on the economy is limited because a large number of employees are already covered by Federal, State and local statutes that require equal employment opportunity for the disabled. Two estimates of newly covered employees are relevant.[21] Twenty million employees not already covered by the Rehabilitation Act or State statutes comparable to the ADA will be covered by title I. If State statutes similar to ADA are included, only 15 million employees will be newly covered.[22]

The cost of accommodation is, of course, critical to determining the influence of Title I on the nation's economy. (For this analysis, average cost of accommodation refers to the average cost per disabled employee, not average cost per accommodation. This is necessary to account for the large proportion of disabled workers who do not require accommodation). One estimate is provided by the Berkeley Planning Associates (BPA) survey of federal contractors subject to section 503.[23] The study provides a table with percentage of accommodations within cost ranges. For example, most frequently cited are the first three ranges, where 51.1 percent of all accommodations are made at no cost, 18.5 percent at costs between $1 and $99 and 11.9 percent at costs between $100 and $499. Thus more than 80 percent of all accommodations cost less than $500. The average cost of accommodation according to that report is $304 when (1) mid-points of the published cost ranges are used for calculation, (2) it is recognized that at least one-half of disabled workers require no accommodation,[24] and (3) the highest cost range accounting for only 1.6 percent of accommodations is excluded as expenses of this caliber are likely to be structural changes that are probably covered by title III.

A second estimate can be developed from a study conducted for the Business Roundtable regarding Section 503 and other regulatory costs. [25] This study calculated that the annual cost of complying with section 503 was $3,574,000 per year. Cost estimates specific to reasonable accommodations were not made. It would be expected that these costs are much higher than those required by title I because Section 503 requires federal contractors to take affirmative action. As affirmative action requirements necessitate costs such as reporting and affirmative action plan development that are not necessary under title I, this estimate is upwardly biased. To determine the average cost of accommodations, the number of annual employment opportunities in the work force of survey firms (2,800,000 employees) was estimated by using the monthly turnover rate of large firms, 0.8 percent,[26] to estimate that there were 22,400 employment opportunities each month, or 268,000 vacancies per year. Since the Berkeley Planning Associates study found that 3.5 percent of federal

[17] Rougeau, Weldon, Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor, statement before Congress, Equal Employment Opportunity for the Handicapped Act of 1979: Hearings on S. 446 Before the Senate Committee on Labor and Human Resources, 96th Congress 1st Session 103 (1979) p. 103.

[18] Equal to the Task, 1981 DuPont Survey of Employment of the Handicapped, 1982, pp. 17–18.

[19] Digest of Data on Persons with Disabilities, Congressional Research Service, June 1984.

[20] D'Innocenzio, Anne, "Accommodating Disabilities", Government Executive, October 1990, p. 2.

[21] Estimates were developed by the Commission's Office of Program Operations, Program Research and Surveys Division. The estimates begin from an initial estimate of the number of employers and employees subject to the Uniform Guidelines on Employee Selection Procedures. These figures can be shown to be consistent with estimates developed privately and for other purposes by Dunn and Bradstreet. Employers and their work forces are then classified depending on their coverage by State statutes resembling in some way the ADA.

[22] As the analysis will depend on the number of workers likely to be affected by Title I, terms like "15 million newly covered employees" is used. The more accurate term might be "covered employers employing 15 million employees" as employers rather than employees will be covered by title I.

[23] A Study of Accommodations Provided to Handicapped Employees by Federal Contractors, Vol 1: Study Findings, Berkeley Planning Associates for the U.S. Department of Labor, Employment Standards Administration, June 17, 1982, p. 29.

[24] Not all disabled workers require accommodation, The ICD Survey of Disabled Americans, Bringing Disabled Americans Into the Mainstream, a Nationwide Survey of 1,000 Disabled People, ICD-International Center for the Disabled and Lou Harris Associates, Inc., 1986 reports that only 35 percent of disabled persons who are employed, report some sort of accommodation. Another study (Finnegan, Daniel, Robert Reuter and Gail Armstrong Taff, "The Costs and Benefits Associated with the Americans with Disabilities Act", Quality Planning Associates, September 11, 1989) indicates that one-half of disabled employees would require accommodation.

[25] Cost of Government Regulation Study for the Business Roundtable, Arthur Andersen & Co. for the Business Roundtable, (March 1979).

[26] Turnover rates used in this analysis are from "BNA's Job Absence and Turnover Report—2nd Quarter 1990", Bulletin to Management, The Bureau of National Affairs, September 13, 1990, pp. 293.

contractor's work forces were disabled, it is assumed that 3.5 percent of these vacancies went to disabled individuals. Thus the $3,574,000 required to comply with section 503 can be divided among 9,408 disabled employees for an average cost of $380.

Using an analysis of Section 504 costs, a study projecting the impact of the "Americans with Disabilities Act of 1989 estimated that the average cost of accommodations was $200 but this average cost did not account for their estimate that one-half of accommodations require no cost.[27] Thus the average cost would actually be $100.

Relevant estimates then of the average cost of accommodation are $304, and $380, and $100. These estimates are quite consistent considering the divergency of the sources. The mean of these three estimates is $261. This figure can be used to predict accommodation expenses that might result from title I.

If we count as newly covered employees those without either a comparable or similar State statute, then 15 million employees will annually produce 1,800,000 vacancies applying a 1 percent monthly turnover rate. If we assume the same level of compliance as Berkeley Planning Associates observed by federal contractors, then 3.5 percent or 63,000 vacancies would go to disabled workers, resulting in annual accommodation expenses of $16,443,000.

Productivity Gains

Title I is expected to increase productivity because employers will use a larger labor pool, and there will be more optimal investments in human capital. In order to estimate productivity gains from the Act, it must be assumed that as the marginal productivity theory of labor economics suggests, a worker's increased marginal productivity will equal the worker's increased marginal income. Thus, the increased wages of disabled workers after ADA will indicate increased productivity. This approach was used by O'Neill in his finding that benefits far outweigh costs in the Department of Health, Education, and Welfare's (HEW) implementation of section 504.[28] He estimated that the $50 million required to implement the employment provisions (reasonable accommodation expenses) would yield $500 million in benefits (increased productivity). Therefore the benefits are 10 times greater than the costs. Given the range of cost benefit estimates cited by Martin, O'Neill's estimate is conservative. His estimate is particularly relevant to the Title I rule since it is modeled on the section 504 regulation. If O'Neill's cost/benefit ratio is applied to the reasonable accommodation expenses presented above, increased productivity that can be attributed to the rule can be estimated at $164,430,000.

Decreased Support Payments

The social benefits of decreasing support payments and increasing tax revenues by expanding the employment of the disabled seem particularly important currently as Federal, state and local governments are frequently confronting budget deficits. Reduced support and increased tax payments have been examined in various contexts involving legislation affecting disabled workers.

Hearne explains the setting for understanding the gains to be achieved if support payments are reduced.

> If these billions of dollars [spent on an annual basis for supplemental social security income for the disabled] are continually spent to keep [the disabled] * * * population alive and not spent by Congress or by the States on access to employment, on transportation, on the real issues that affect disabled people, it is far more costly, since there is no return with this money. If this money is turned into vocational rehabilitation funds [or funds for reasonable accommodation] and individuals are placed in jobs, they become taxpayers. So that there is a two-fold benefit: One, they are taken off the public assistance rolls; and two, not only are they functionally employed and attaining independent lives as well as economic independence, but they are also paying taxes and broadening the tax base.
>
> In 1974 the three public benefit programs—public assistance, which is the State welfare, AFDC and home relief; social security disability insurance, which is primarily paid to injured workers; and SSI which, as I mentioned earlier, is the benefit program which goes to most disabled people unemployed—payments amounted to a total of about $8.3 billion.[29]

A summary of research regarding section 504 of the Rehabilitation Act of 1973 provides an indication of tax revenues lost as a result of no regulation.

> One study commissioned by the Department of Health, Education, and Welfare's Office of Civil Rights estimated that eliminating discrimination against handicapped people in HEW funded grant programs would yield $1 billion annually in increased employment and earnings for handicapped people. In addition to increasing the gross national product it has been estimated that such an earnings increase by handicapped workers would result in some $58 million in additional tax revenues to Federal, State, and local governments. [30]

In support of a national rehabilitation program in 1973, Senator Cranston noted the same increase in tax revenues but also addressed the reduction in support payments. "And these figures do not reflect the approximately $33 million in savings to Federal and State governments in 1972 caused by removal of many rehabilitation persons from the public assistance rolls." [31]

A case study, while not providing the overall savings from reducing support payments, provides concrete evidence that such reductions will occur. The Rehabilitation Institute of Chicago worked towards the placement of 176 disabled workers. The gainful employment of these relatively few individuals was estimated to result in a savings of $1,056,000 in disability benefits in one year.[32]

In a similar vein, a hypothetical example explains the long range benefits of only hiring three disabled employees.

> As an example, take a disabled person who starts work at a $10,000 per annum job. He or she will pay slightly over $2,000 in taxes and will no longer collect $6,000 in [support] benefits. The gain to society is in general at least $8,000 per year for the remainder of this person's working life. Assuming a starting age of 25, this means 40 years of constructive work for a minimum net savings of $320,000. Using this simple analogy, hiring only three disabled people will eventually save society one million dollars.[33]

It was estimated above that title I will generate 63,000 employment opportunities for the disabled. It was also noted that two-thirds of disabled Americans are not working and that of these, two-thirds say they would like to work. Thus we might expect as much as

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[27] Finnegan, Daniel, Robert Reuter and Gail Armstrong Taff, "The Costs and Benefits Associated with the Americans with Disabilities Act", Quality Planning Associates, September 11, 1989, p. 38.

[28] O'Neill, Dave M., "Discrimination Against Handicapped Persons, the Costs, Benefits and Inflationary Impact of Implementing Section 504 of the Rehabilitation Act of 1973 Covering Recipients of HEW Financial Assistance", Public Research Institute, February 18, 1976.

[29] Hearne, Paul G., statement in Civil Rights Issues of Handicapped Americans: Public Policy Implications, consultation before the U.S. Commission on Civil Rights, Washington, DC, May 13–14, 1980, p. 200.

[30] Accommodating the Spectrum of Individual Abilities, United States Commission on Civil Rights, Clearinghouse Publication 81, 1983, p. 75.

[31] Statement of Senator Cranston, 119 Congressional Record, 24,586, July 18, 1973.

[32] Special Report: Disability and Employment, Facts About Costs and Benefits, The President's Committee on Employment of the Handicapped, Washington, DC, 1980.

[33] Tucker, Bonnie P., "Section 504 of the Rehabilitation Act After Ten Years of Enforcement: the Past and the Future", University of Illinois Law Review, vol 1989, no 4, 1989, p. 890.

44 percent (0.66 times 0.66) or 27,720 of these employment opportunities to go to individuals receiving support payments. Using Tucker's modest estimate of tax and support payment savings of $8,000 per worker results in total savings of $221,760,000 per year. This is an extremely rough estimate, but it may be conservative. For example, tax revenues would be based on income, and the assumption that the average income of the newly employed disabled workers would be $10,000 is clearly too low.

Benefits of Equity

The utility of cost benefit analysis for equal employment opportunity rules has been questioned, as it is difficult to quantify benefits like equity. This argument has been applied specifically to equal employment opportunity for the disabled.

The degree to which cost-benefit analysis may be applied appropriately to government programs for handicapped people has been the subject of controversy. Many authorities agree that the analysis of financial costs and benefits is an important consideration in selecting the most efficient alternative among several choices for reaching a particular goal. It is not so clear, however, that using cost-benefit analysis to select societal goals or evaluate social programs is appropriate. Cost benefit analysis strongly favors quantifiable data, usually dollars and cents, on the theory that marketplace prices, fixed by supply and demand, are more reliable than subjective value judgments. Many social programs exist, however, because the marketplace does not adequately provide needed public services or because it is unfairly biased.[34]

It is clear that even if one accepts cost benefit analysis for the title I rule, the benefits of the regulation will be vastly underestimated due to the inability to quantify the value of a more equitable labor market.

Administrative Costs

OMB guidance indicates that one cost that should be considered in projecting regulatory impact is government administrative costs. The main administrative cost from implementation of title I is the salaries for EEOC employees investigating charges received from individuals alleging discrimination in violation of title I. While, other substantial administrative costs, such as staff training and information system modifications, will be incurred during the initial implementation of title I, these costs will eventually decline. EEOC has estimated that the cost of the first full year of implementation is roughly $25 million. This excludes some one-time only expenses such as modification of management information systems. Table 1 summarizes title I costs, both positive, negative and neutral from the three major effects on the economy plus EEOC administrative costs.

TABLE 1.—SUMMARY OF ANNUAL EFFECTS ON THE ECONOMY AS A RESULT OF TITLE I

Reasonable Accommodation Expenses	$16,443,000
Productivity Gains	$164,430,000
Decreased Support Payments and Increased Taxes	$221,760,000
EEOC Administrative Costs	$25,000,000

Cost Benefit Ratio

Due to the inability to clearly define costs as positive or negative, it is not particularly useful to calculate a cost benefit ratio. However, there is considerable evidence that the cost/benefit ratio of the proposed regulation is positive. Martin indicates that "conservative estimates of the ratio of benefits to costs for such requirements have ranged between 8 to 1 to 35 to 1." [35] Irrespective of how the economic effects outlined above are labelled, the cost benefit ratio of title I is clearly positive.

The No Regulation Alternative

In examining the "no regulation" alternative, there are clearly no costs. Therefore the analysis focuses on lost benefits, that is, social benefits that will be lost if the regulation is not promulgated. As discussed earlier, it is possible to treat each of the effects on the economy except administrative costs borne by EEOC as benefits. This approach would indicate that the annual total benefits lost by not promulgating title I is $402,663,000. If a more traditional approach is taken and reasonable accommodation expenses are counted as costs rather than benefits, the lost annual benefits are still quite substantial at $386,190,000.

Biases in Estimates

It is important to briefly explain biases in the estimates provided above. First, the estimates of economic impact do not account for the transferability of accommodations. Whenever an accommodation is made, there is a possibility that the accommodation can be used for future hires. This suggests that while the provided expense estimates might be appropriate during an earlier period of compliance, future expenses will be much lower. It is also probable that some accommodations may be used by more than one individual with a disability, for example, a sign interpreter may serve several hearing impaired employees.

Second, while in the analysis above, costs of some structural accommodations were eliminated, some of the less expensive of these accommodations may still be included in the estimates. Since the elimination of these barriers are likely to be made as a result of title II or title III of the ADA, they overstate costs under the employment provisions of title I.

Third, the number of newly covered employees, used in this analysis, does not exclude employees who are already covered by local statutes comparable or similar to the ADA. Failure to account for local statutes overestimates the number ot title I required accommodations. Thus, the economic effect of accommodation expenses, productivity gains and reduction in support payments and increased tax revenues may be less than estimated. Fourth, reasonable accommodation estimates are based, in two instances, on experience implementing section 503. This section contains an affirmative action requirement, and the Department of Labor requires written affirmative action plans. It is possible that the costs of meeting the affirmative action requirement are, in part, reflected in contractors' estimations of the cost of reasonable accommodation. This is certainly the case when using the Business Roundtable estimate.

Fourth, the estimates do not account for tax deductions or tax credits available to firms making accommodations. Tax credits are available for small businesses that are equal to 50 percent of reasonable accommodation expenses between $250 and $10,250. The effect of these credits, using Berkeley Planning Associates breakdown of accommodations by cost ranges, is demonstrated in Table 2. It is based on an assumption that those eligible for the credit are employing between 15 and 25 employees. There are only one million newly covered employees in this group. The 1 percent monthly turnover rate and 3.5 percent availability rate indicate that the expected number of accommodations for these firms is 2,100. Thus the 63,000 new employment opportunities for disabled workers expected as a result of ADA, would produce tax credits offsetting

[34] *Accommodating the Spectrum of Individual Abilities*, United States Commission on Civil Rights, Clearinghouse Publication 81, September 1983, p. 73.

[35] Martin, Mark E., "Accommodating the Handicapped: the Meaning of Discrimination Under Section 504 of the Rehabilitation Act", (a note) New York University Law Review, Vol. 55, November 1980, p. 901.

reasonable accommodation expenses by about $372,292. The tax credits are underestimated, as some firms with more than 25 employees would qualify. Tax deductions will also lower costs, but sufficient information to estimate the full effect of the deductions is not readily available. While tax credits and deductions can be viewed as transfers rather than pecuniary costs, it indicates a lower level of expense may be required by businesses.

TABLE 2.—CALCULATION OF TAX CREDITS

Percent	No.	Cost (dollars)	Tax credit	Total tax credit
11.9	250	299.5	$149.75	$37,422.52
6.2	130	749.5	374.75	48,792.45
4.3	90	1,499.5	749.75	67,702.43
3.8	80	3,499.5	1,749.75	139,630.05
1.0	21	7,499.5	3,749.75	78,744.75
Total				$372,292.20

Finally, no attempt was made to place the estimates of economic effects in constant dollars. While a number of estimates are based on data collection around 1980, the estimate of administrative costs is very recent. As the rate of inflation during the 1980's was relatively low (for example, 5.5 percent from 1980 to 1985) and the estimates are quite rough, adjustments for inflation would not be useful. However, the failure to make adjustments will tend to overestimate administrative costs relative to other estimated costs.

Rationale for Choosing the Proposed Regulatory Action

As mentioned previously, the ADA does not provide much discretion in the Commission's development of implementing regulations. Therefore the true rationale for the proposed regulatory action is legislative direction. However, absent this direction, the adopted course of action seems to be the most appropriate one. Whether reasonable accommodation expenses are defined as costs or benefits, the title I regulation is likely to have benefits exceeding costs.

A Statement of Statutory Authority

The statutory authority is title I of the Americans With Disabilities Act.

Impact on Smaller Businesses

According to guidance published by the Small Business Administration, a Regulatory Flexibility Analysis (RFA) requires:

> the agencies of the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. If a proposed rule is expected to have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis must be prepared and published in the **Federal Register** describing the impact.[36]

A key rationale for this requirement is found in section 2(a)(2) of the Regulatory Flexibility Act,

> uniform Federal regulatory and reporting requirements have in numerous instances imposed unnecessary and disproportionately burdensome demands including legal, accounting and consulting costs upon small businesses, small organizations, and small governmental jurisdictions with limited resources.

The cost of reasonable accommodation is not uniform across firms but dependent on the number of disabled applicants and employees who need an accommodation. This will ultimately be related to the number of employment opportunities. Therefore a significant economic impact on small entities is not expected.

Because smaller firms have fewer employees, the rule can be expected to impose fewer costs on these employers as they will have fewer employment opportunities and fewer applicants and employees who need an accommodation. The values used to calculate reasonable accommodation expenses can be used as an example. Recall 15 million newly covered employees are expected under title I. Of these, 14 million work for firms with more than 25 employees. There were 56,100 such firms. Based on a 1 percent monthly turnover rate, the expected proportion of employment opportunities to be gained by disabled workers of 3.5 percent and recognizing that 50 percent of disabled workers require no accommodation, these firms would be expected to make 29,400 accommodations per year, or 0.524 accommodations per firm. Firms with between 15 and 25 employees only employ one million of the newly covered employees. Based on the same turnover and availability rates, these employers, which number 141,200, would be expected to make 2,100 accommodations per year, or 0.015 per firm. So on average, smaller firms would rarely make an accommodation and larger firms are more than 30 times more likely to make an accommodation. Further, firms with fewer than 15 employees are not covered by the title I regulation and would not be required to make any accommodations.

The economic impact of the rule is also less on smaller firms, those between 15 and 25 employees, than on larger firms because smaller firms are not covered during the first two years that title I is in effect. This lag benefits smaller businesses by directly reducing the economic burden and by allowing smaller employers to benefit from technological or production innovations in accommodations made by larger firms during the period when smaller firms are not covered.

Finally, it should be noted again that the title I rule has no reporting requirements. A major concern regarding the inequitable impact of regulation on small firms is that reporting and accompanying record keeping requirements can be as costly to smaller firms as large ones. The absence of reporting requirements eliminates this concern for the title I regulation.

In conclusion, the economic impact of the rule on small entities is not expected to be significant, with the vast majority of small businesses not expected to make an accommodation during a year. Additionally, there are aspects of the rule that result in small businesses having lower compliance costs than large businesses.

List of Subjects in 29 CFR Part 1630

Equal employment opportunity, Handicapped, Individuals with disabilities.

For the Commission,

Evan J. Kemp, Jr.,

Chairman.

Accordingly, it is proposed to amend 29 CFR chapter XIV by adding part 1630 to read as follows:

PART 1630—REGULATIONS TO IMPLEMENT THE EQUAL EMPLOYMENT PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT

Sec.

1630.1 Purpose, applicability, and construction.
1630.2 Definitions.
1630.3 Exceptions to the definitions of "Disability" and "Qualified Individual with a Disability."
1630.4 Discrimination prohibited.
1630.5 Limiting, segregating, and classifying.
1630.6 Contractual or other arrangements.
1630.7 Standards, criteria, or methods of administration.
1630.8 Relationship or association with an individual with an individual with a disability.
1630.9 Not making reasonable accommodation.
1630.10 Qualification standards, tests, and other selection criteria.
1630.11 Administration of tests.
1630.12 Retaliation and coercion.
1630.13 Prohibited medical examinations and inquiries.

[36] "The Regulatory Flexibility Act", U.S. Small Business Administration, October 1982, p. 11.

Sec.
1630.14 Medical examinations and inquiries specifically permitted.
1630.15 Defenses.
1630.16 Specific activities permitted.

Appendix to part 1630—Interpretive Guidance on Title I of the Americans with Disabilities Act.

Authority: 42 U.S.C. 12116.

§ 1630.1 Purpose, applicability, and construction.

(a) *Purpose.* The purpose of this part is to implement title I of the Americans with Disabilities Act (ADA), requiring equal employment opportunities for qualified individuals with disabilities, and sections 3(2), 3(3), 501, 503, 508, 510, and 511 of the ADA as those sections pertain to the employment of qualified individuals with disabilities.

(b) *Applicability.* This part applies to "covered entities" as defined at § 1630.2(b).

(c) *Construction.*—(1) *In general.* Except as otherwise provided in this part, this part does not apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790–794a), or the regulations issued by Federal agencies pursuant to that title.

(2) *Relationship to other laws.* This part does not invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this part.

§ 1630.2 Definitions.

(a) *Commission* means the Equal Employment Opportunity Commission established by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4).

(b) *Covered Entity* means an employer, employment agency, labor organization, or joint labor management committee.

(c) *Person, labor organization, employment agency, commerce and industry affecting commerce* shall have the same meaning given those terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(d) *State* means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands and the Commonwealth of the Northern Mariana Islands.

(e) *Employer.*—(1) *In general.* The term "employer means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, from July 26, 1992 through July 25, 1994, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year and any agent of such person.

(2) *Exceptions.* The term employer does not include—

(i) The United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) A bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

(f) *Employee* means an individual employed by an employer.

(g) *Disability* means, with respect to an individual—

(1) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(2) A record of such an impairment; or

(3) Being regarded as having such an impairment.

(See § 1630.3 for exceptions to this definition).

(h) *Physical or mental impairment* means:

(1) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(i) *Major Life Activities* means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(j) *Substantially limits.*—(1) The term "substantially limits" means:

(i) Unable to perform a major life activity that the average person in the general population can perform; or

(ii) Significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.

(2) The following factors should be considered in determining whether an individual is substantially limited in a major life activity:

(i) The nature and severity of the impairment;

(ii) The duration or expected duration of the impairment; and

(iii) The permanent or long term impact, or the expected permanent or long term impact of or resulting from the impairment.

(3) With respect to the major life activity of "working"—

(i) The term "substantially limits" means significant restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities. The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working.

(ii) In addition to the factors listed in paragraph (j)(2) of this section, the following factors should be considered in determining whether an individual is substantially limited in the major life activity of "working":

(A) The geographical area to which the individual has reasonable access;

(B) The job from which the individual has been disqualified because of an impairment, and the number and types of jobs utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (class of jobs); and/or

(C) The job from which the individual has been disqualified because of an impairment, and the number and types of other jobs not utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (broad range of jobs in various classes).

(k) *Has a record of such impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(l) *Is regarded as having such an impairment* means:

(1) Has a physical or mental impairment that does not substantially limit major life activities but is treated by a covered entity as constituting such limitation;

(2) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(3) Has none of the impairments defined in paragraphs (h) (1) or (2) of

this section but is treated by a covered entity has having such an impairment.

(m) *Qualified individual with a disability* means an individual with a disability who satisfies the requisite skill, experience and education requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position. (See § 1630.3 for exceptions to this definition).

(n) *Essential functions.*—(1) *In general.* The term "essential functions" means primary job duties that are intrinsic to the employment position the individual holds or desires. The term "essential functions" does not include the marginal or peripheral functions of the position that are incidental to the performance of primary job functions.

(2) A job function may be considered essential for any of several reasons, including but not limited to the following:

(i) The function may be essential because the reason the position exists is to perform that function;

(ii) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed; and/or

(iii) The function may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

(3) Evidence that may be considered in determining whether a particular function is essential includes but is not limited to:

(i) The employer's judgment as to which functions are essential;

(ii) Written job descriptions prepared before advertising or interviewing applicants for the job;

(iii) The amount of time spent on the job performing the function;

(iv) The consequences of not requiring the incumbent to perform the function;

(v) The work experience of past incumbents in the job; and/or

(vi) The current work experience of incumbents in similar jobs.

(o) *Reasonable accommodation.*—(1) The term *reasonable accommodation* means:

(i) Any modification or adjustment to a job application process that enables a qualified individual with a disability to be considered for the position such qualified individual desires, and which will not impose an undue hardship on the covered entity's business; or

(ii) Any modification or adjustment to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enables a qualified individual with a disability to perform the essential functions of that position, and which will impose an undue hardship on the operation of the covered entity's business; or

(iii) Any modification or adjustment that enables a covered entity's employee with a disability to enjoy the same benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities, and which will not impose an undue hardship on the operation of the covered entity's business.

(2) *Reasonable accommodation* may include but is not limited to:

(i) Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(ii) Job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.

(3) To determine the appropriate reasonable accommodation it may be necessary for the covered entity to initiate an informal, interactive process with the qualified individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.

(p) *Undue hardship.*—(1) *In general. Undue hardship* means, with respect to the provision of an accommodation, significant difficulty or expense incurred by a covered entity, when considered in light of the factors set forth in paragraph (p)(2) of this section.

(2) *Factors to be considered.* In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include:

(i) The nature and cost of the accommodation needed under this part;

(ii) The overall financial resources of the site or sites involved in the provision of the reasonable accommodation, the number of persons employed at such site, and the effect on expenses and resources;

(iii) The overall financial resources of the covered entity, the overall size of the business of the covered entity with respect to the number of its employees, and the number, type and location of its facilities;

(iv) The type of operation or operations of the covered entity, including the composition, structure and functions of the workforce of such entity, and the geographic separateness and administrative or fiscal relationship of the site or sites in question to the covered entity; and

(v) The impact of the accommodation upon the operation of the site, including the impact on the ability of other employees to perform their duties and the impact on the site's ability to conduct business.

(3) *Site* means a geographically separate subpart of a covered entity.

(q) *Qualification standards* means the personal and professional attributes including the skill, experience, education, physical, medical, safety and other requirements established by a covered entity as requirements which an individual must meet in order to be eligible for the position held or desired. Qualification standards may include a requirement that an individual not pose a direct threat to the health or safety of the individual or others. (See § 1630.10 Qualification standards, tests and other selection criteria).

(r) *Direct Threat* means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated by reasonable accommodation. The determination that an individual with a disability poses a "direct threat" should be based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence. In determining whether an individual would pose a direct threat, the factors to be considered include:

(1) The duration of the risk;

(2) The nature and severity of the potential harm; and

(3) The likelihood that the potential harm will occur.

§ 1630.3 Exceptions to the definitions of "Disability" and "Qualified Individual with a Disability."

(a) The terms *disability* and *qualified individual with a disability* do not include individuals currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(1) *Drug* means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

(2) *Illegal use of drugs* means the use of drugs the possession or distribution of which is unlawful under the Controlled Substances Act, as periodically updated by the Food and Drug Administration.

This term does not include the use of a drug taken under the supervision of a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(b) However, the terms *disability* and *qualified individual with a disability* may not exclude an individual who:

(1) Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs; or

(2) Is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) Is erroneously regarded as engaging in such use, but is not engaging in such use.

(c) It shall not be a violation of this part for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (b) (1) or (2) of this section is no longer engaging in the illegal use of drugs. (See § 1630.16(c) Drug testing).

(d) *Disability* does not include:

(1) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(2) Compulsive gambling, kleptomania, or pyromania; or

(3) Psychoactive substance use disorders resulting from current illegal use of drugs.

(e) *Homosexuality and bisexuality* are not impairments and so are not disabilities as defined in this part.

§ 1630.4 Discrimination prohibited.

It is unlawful for a covered entity to discriminate on the basis of disability against a qualified individual with a disability in regard to:

(a) Recruitment, advertising, and job application procedures;

(b) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(c) Rates of pay or any other form of compensation and changes in compensation;

(d) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(e) Leaves of absence, sick leave, or any other leave;

(f) Fringe benefits available by virtue of employment, whether or not administered by the covered entity;

(g) Selection and financial support for training, including, apprenticeships, professional meetings, conferences and other related activities, and selection for leaves of absence to pursue training;

(h) Activities sponsored by a covered entity including social and recreational programs; and

(i) Any other term, condition, or privilege of employment.

The term *discrimination* includes but is not limited to the acts in §§ 1630.5 through 1630.13 of this part.

§ 1630.5 Limiting, segregating, and classifying.

It is unlawful for a covered entity to limit, segregate, or classify a job applicant or employee in a way that adversely affects his or her employment opportunities or status on the basis of disability.

§ 1630.6 Contractual or other arrangements.

(a) *In general.* It is unlawful for a covered entity to participate in a contractual or other arrangement or relationship that has the effect of subjecting the covered entity's own qualified applicant or employee with a disability to the discrimination prohibited by this part.

(b) *Contractual or other arrangement defined.* The phrase "contractual or other arrangement or relationship" includes, but is not limited to, a relationship with an employment or referral agency; labor union, including collective bargaining agreements; an organization providing fringe benefits to an employee of the covered entity; or an organization providing training and apprenticeship programs.

(c) *Application.* This section applies to a covered entity, with respect to its own applicants or employees, whether the entity offered the contract or initiated the relationship, or whether the entity accepted the contract or acceded to the relationship. A covered entity is not liable for the actions of the other party or parties to the contract which only affect that other party's employees or applicants.

§ 1630.7 Standards, criteria, or methods of administration.

It is unlawful for a covered entity to use standards, criteria, or methods of administration, which are not job-related and consistent with business necessity, and:

(a) That have the effect of discriminating on the basis of disability; or

(b) That perpetuate the discrimination of others who are subject to common administrative control.

§ 1630.8 Relationship or association with an individual with a disability.

It is unlawful for a covered entity to exclude or otherwise deny equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a family, business, social or other relationship or association.

§ 1630.9 Not making reasonable accommodation.

(a) It is unlawful for a covered entity not to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of its business.

(b) It is unlawful for a covered entity to deny employment opportunities to an otherwise qualified job applicant or employee with a disability based on the need of such covered entity to make reasonable accommodation to such individual's physical or mental impairments.

(c) A covered entity shall not be excused from the requirements of this part because of any failure to receive technical assistance, including any failure in the development or dissemination of any technical assistance manual authorized by the ADA.

(d) A qualified individual with a disability is not required to accept an accommodation, aid, service, opportunity or benefit which such qualified individual chooses not to accept. However, if such individual rejects a reasonable accommodation, aid, service, opportunity or benefit that is necessary to enable the individual to perform the essential functions of the position held or desired, and cannot, as a result of that rejection, perform the essential functions of the position, the individual will not be considered a qualified individual with a disability.

§ 1630.10 Qualification standards, tests, and other selection criteria.

(a) *In general.* It is unlawful for a covered entity to use qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity.

(b) *Direct threat as a qualification standard.* Notwithstanding paragraph (a) of this section, a covered entity may use as a qualification standard the requirement that an individual be able to perform the essential functions of the position held or desired without posing a direct threat to the health or safety of the individual or others. (See § 1630.2(r) defining "direct threat").

§ 1630.11 Administration of tests.

It is unlawful for a covered entity to fail to select and administer tests concerning employment in the most effective manner to ensure that, when a test is administered to a job applicant or employee who has a disability that impairs sensory, manual or speaking skills, the test results accurately reflect the skills, aptitude, or whatever other factor of the applicant or employee that the test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

§ 1630.12 Retaliation and coercion.

(a) *Retaliation.* It is unlawful to discriminate against any individual because that individual has opposed any act or practice made unlawful by this part or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing to enforce any provision contained in this part.

(b) *Coercion, interference or intimidation.* It is unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or because that individual aided or encouraged any other individual in the exercise of, any right granted or protected by this part.

§ 1630.13 Prohibited medical examinations and inquiries.

(a) *Pre-employment examination or inquiry.* Except as permitted by § 1630.14, it is unlawful for a covered entity to conduct a medical examination of an applicant or to make inquiries as to whether an applicant is an individual with a disability or as to the nature or severity of such disability.

(b) *Examination or inquiry of employees.* Except as permitted by § 1630.14, it is unlawful for a covered entity to require a medical examination of an employee or to make inquiries as to whether an employee is an individual with a disability or as to the nature or severity of such disability, unless the examination or inquiry is shown to be job-related and consistent with business necessity.

§ 1630.14 Medical examinations and inquiries specifically permitted.

(a) *Acceptable pre-employment inquiry.* A covered entity may make pre-employment inquiries into the ability of an applicant to perform job-related functions.

(b) *Employment entrance examination.* A covered entity may require a medical examination after making an offer of employment to a job applicant and before the applicant begins his or her employment duties, and may condition an offer of employment on the results of such examination, if all entering employees in the same job category are subjected to such an examination regardless of disability.

(1) Information obtained regarding the medical condition or history of the applicant shall be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record, except that:

(i) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) Government officials investigating compliance with this part shall be provided relevant information on request.

(2) The results of such examination may be used only in accordance with this part.

(3) Medical examinations conducted in accordance with this Section do not have to be job-related and consistent with business necessity. However, if certain criteria are used to screen out an employee or employees with disabilities as a result of such an examination or inquiry, the exclusionary criteria must be job-related and consistent with business necessity, and performance of the essential job functions cannot be accomplished with reasonable accommodation as required in this part. (See § 1630.15(b) Defenses to charges of discriminatory application of selection criteria).

(c) *Other acceptable examinations and inquiries.* A covered entity may conduct voluntary medical examinations and activities, including voluntary medical histories, which are part of an employee health program available to employees at the work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

(1) Information obtained under paragraph (c) of this section regarding the medical condition or history of any employee shall be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record, except that:

(i) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) Government officials investigating compliance with this Part shall be provided relevant information on request.

(2) Information obtained under paragraph (c) of this section regarding the medical condition or history of any employee shall not be used for any purpose inconsistent with this part.

§ 1630.15 Defenses.

Defenses to an allegation of discrimination under this part may include, but are not limited to, the following:

(a) *Disparate treatment charges.* It may be a defense to a charge of disparate treatment brought under §§ 1630.4–1630.8 and 1630.11–1630.12 that the challenged action is justified by a legitimate, nondiscriminatory reason.

(b) *Charges of discriminatory application of selection criteria.* It may be a defense to a charge of discrimination, as described in § 1630.10, that an alleged application of qualification standards, tests, or selection criteria that screens out or tends to screen out or otherwise denies a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished with reasonable accommodation, as required in this part.

(c) *Other disparate impact charges.* It may be a defense to a charge of discrimination brought under this part that a uniformly applied standard, criteria, or policy has a disparate impact on an individual or class of individuals with disabilities that the challenged standard, criteria or policy has been shown to be job-related and consistent with business necessity and such performance cannot be accomplished with reasonable accommodation, as required in this part.

(d) *Charges of not making reasonable accommodation.* It may be a defense to a charge of discrimination, as described in § 1630.9, that a requested or necessary accommodation would impose an undue hardship on the operation of the covered entity's business.

(e) *Conflict with other Federal laws.* It may be a defense to a charge of discrimination under this part that a challenged action is required or necessitated by another Federal law or regulation, or that another Federal law or regulation prohibits an action (including the provision of a particular reasonable accommodation) that would otherwise be required by this part.

(f) *Additional defenses.* It may be a defense to a charge of discrimination under this part that the alleged discriminatory action is specifically permitted by §§ 1630.14 or 1630.16.

§ 1630.16 Specific activities permitted.

(a) *Religious entities.* A religious corporation, association, educational institution, or society is permitted to give preference in employment to individuals of a particular religion to perform work connected with the carrying on by that corporation, association, educational institution, or society of its activities. A religious entity may require that all applicants and employees conform to the religious tenets of such organization. However, a religious entity may not discriminate against a qualified individual, who satisfies the permitted religious criteria, because of his or her disability.

(b) *Regulation of alcohol and drugs.* A covered entity:

(1) May prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(2) May require that employees not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(3) May require that all employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.);

(4) May hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior to which the entity holds its other employees, even if any unsatisfactory performance or behavior is related to the employee's drug use or alcoholism;

(5) May require that its employees employed in an industry subject to such regulations comply with the standards established in the regulations of the Departments of Defense and Transportation, and of the Nuclear Regulatory Commission, regarding alcohol and the illegal use of drugs; and

(6) May require that employees employed in sensitive positions comply with the regulations (if any) of the Departments of Defense and Transportation and of the Nuclear Regulatory Commission that apply to employment in sensitive positions subject to such regulations.

(c) *Drug testing.*—(1) *General policy.* For purposes of this part, a test to determine the illegal use of drugs is not considered a medical examination. Thus, the administration of drug tests by a covered entity to its job applicants or employees is not a violation of § 1630.13 of this part. However, this part does not encourage, prohibit, or authorize a covered entity from conducting drug testing of job applicants or employees for the illegal use of drugs or from making employment decisions based on such test results.

(2) *Transportation Employees.* This part does not encourage, prohibit, or authorize the otherwise lawful exercise by entities subject to the jurisdiction of the Department of Transportation of authority to:

(i) Test employees of entities in, and applicants for, positions involving safety sensitive duties for the illegal use of drugs or for on-duty impairment by alcohol; and

(ii) Remove from safety-sensitive positions persons who test positive for illegal use of drugs or on-duty impairment by alcohol pursuant to paragraph (c)(2)(i) of this section.

(3) Any information regarding the medical condition or history of any employee or applicant obtained from a drug test, except information regarding the illegal use of drugs, is subject to the requirements of § 1630.14(b) (2) and (3) of this part.

(d) *Regulation of smoking.* A covered entity may prohibit or impose restrictions on smoking in places of employment. Such restrictions do not violate any provision of this part.

(e) *Infectious and communicable diseases; food handling jobs.*—(1) *In general.* Under title I of the ADA, section 103(d)(1), the Secretary of Health and Human Services is to prepare a list, to be updated annually, of infectious and communicable diseases which can be transmitted through the handling of food. If an individual with a disability is disabled by one of the infectious or communicable diseases included on this list, and if the risk of transmitting the disease associated with the handling of food cannot be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign such individual to a job involving food handling. However, if the individual with a disability is a current employee, the employer must consider whether he or she can be accommodated by reassignment to a vacant position not involving food handling.

(2) *Effect on State or other laws.* This part does not preempt, modify, or amend any State, county, or local law, ordinance or regulation applicable to food handling which:

(i) Is in accordance with the list, referred to in paragraph (e)(1) of this section, of infectious or communicable diseases and the modes of transmissibility published by the Secretary of Health and Human Services; and

(ii) Is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, where that risk cannot be eliminated by reasonable accommodation.

(f) *Health insurance, life insurance, and other benefit plans.*—(1) An insurer, hospital, or medical service company, health maintenance organization, or any agent or entity that administers benefit plans, or similar organizations may underwrite risks, classify risks, or administer such risks that are based on or not inconsistent with State law regulating insurance.

(2) A covered entity may establish, sponsor, observe or administer the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law regulating insurance.

(3) A covered entity may establish, sponsor, observe, or administer the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance.

(4) The activities described in paragraphs (f) (1), (2), and (3) of this section are permitted unless these activities are being used as a subterfuge to evade the purposes of this part.

Appendix to Part 1630—Interpretive Guidance on Title I of the Americans with Disabilities Act

Introduction

The Equal Employment Opportunity Commission (the Commission or EEOC) is responsible for enforcement of title I of the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 (1990), which prohibits employment discrimination on the basis of disability. The Commission believes that it is essential to issue interpretive guidance concurrently with the issuance of these regulations in order to ensure that qualified individuals with disabilities understand their

rights under these regulations and to facilitate and encourage compliance by covered entities. This appendix represents the Commission's interpretation of the issues discussed, and the Commission will be guided by it when resolving charges of employment discrimination. The appendix addresses the major provisions of the regulations and explains the major concepts of disability rights.

The terms "employer" or "employer or other covered entity" are used interchangeably throughout this document to refer to all covered entities subject to the employment provisions of the ADA.

Section 1630.1 Purpose, Applicability and Construction

Section 1630.1(a) Purpose

The Americans with Disabilities Act was signed into law on July 26, 1990. It is an antidiscrimination statute which requires that individuals with disabilities be given the same consideration for employment that individuals without disabilities are given. An individual who is qualified for an employment opportunity cannot be denied that opportunity because of the fact that the individual is disabled. The purpose of title I and these regulations is to ensure that qualified individuals with disabilities are protected from discrimination on the basis of disability.

The ADA uses the term "disabilities" rather than the term "handicaps" used in the Rehabilitation Act of 1973, 29 U.S.C. 701–796. Substantively, these are equivalent. As noted by the House Committee on the Judiciary, "[t]he use of the term 'disabilities' instead of the term 'handicaps' reflects the desire of the Committee to use the most current terminology. It reflects the preference of persons with disabilities to use that term rather than 'handicapped' as used in previous laws, such as the Rehabilitation Act of 1973 * * *" H.R. Rep. No. 485 part 3, 101st Cong., 2d Sess. 26–27 (1990) [hereinafter House Judiciary Report]; see also S. Rep. No. 116, 101st Cong., 1st Sess. 21 (1989) [hereinafter Senate Report]; H.R. Rep. No. 485 part 2, 101st Cong., 2d Sess. 50–51 (1990) [hereinafter House Labor Report].

The use of the term "Americans" in the title of the ADA is not intended to imply that the Act only applies to United States citizens. Rather, the ADA protects all qualified individuals with disabilities, regardless of their citizenship status or nationality.

Section 1630.1(b) and (c) Applicability and Construction

Unless expressly stated otherwise, the standards applied in the ADA are not intended to be lesser than the standards applied under the Rehabilitation Act of 1973.

The ADA does not preempt any Federal law, or any state or local law, that grants to individuals with disabilities protection greater than or equivalent to that provided by the ADA. This means that the existence of a lesser standard of protection to individuals with disabilities under the ADA will not provide a defense for failing to meet a higher standard under another law. Thus, for example, title I of the ADA would not be a defense to failing to collect information required to satisfy the affirmative action requirements of Section 503 of the Rehabilitation Act. On the other hand, the existence of a lesser standard under another law will not provide a defense for failing to meet a higher standard under the ADA. See House Labor Report at 135; House Judiciary Report at 69–70.

The ADA does not preempt medical standards or safety requirements established by Federal law or regulations. It does not preempt State, county, or local laws, ordinances or regulations that are consistent with this Part, and are designed to protect the public health from individuals who pose a direct threat which cannot be eliminated by reasonable accommodation to the health or safety of others. However, the ADA does preempt inconsistent requirements established by state or local law for safety or security sensitive positions. See Senate Report at 27; House Labor Report at 57.

An employer allegedly in violation of this part cannot successfully defend its actions by relying on the obligation to comply with the requirements of any state or local law that imposes prohibitions or limitations on the eligibility of qualified individuals with disabilities to practice any occupation or profession. For example, suppose a municipality has an ordinance that prohibits individuals with tuberculosis from teaching school children. If an individual with dormant tuberculosis challenges a private school's refusal to hire him or her because of the tuberculosis, the private school would not be able to rely on the city ordinance as a defense under the ADA.

Sections 1630.2(a)–(f) Commission, Covered Entity, etc.

The definitions section of the regulations includes several terms that are identical, or almost identical, to the terms found in title VII of the Civil Rights Act of 1964. Among these terms are "Commission," "Person," "State," "Employer" and "Employee." These terms are to be given the same meaning under the ADA that they are given under title VII. The term "covered entity" is not found in title VII. However, the title VII definitions of the entities included in the term "covered entity" (*e.g.*, employer, employment agency, *etc.*) are applicable to the ADA.

Section 1630.2(g) Disability

In addition to the term "covered entity," there are several other terms that are unique to the ADA. The first of these is the term "disability." Congress adopted the definition of this term from the Rehabilitation Act definition of the term "individual with handicaps." By so doing, Congress intended that the relevant caselaw developed under the Rehabilitation Act be generally applicable to the term "disability" as used in the ADA. Senate Report at 21; House Labor Report at 50; House Judiciary Report at 27.

The definition of the term "disability" is divided into three parts. An individual must satisfy at least one of these parts in order to be considered an individual with a disability for purposes of this regulation. An individual is considered to have a "disability" if that individual either (1) has a physical or mental impairment which substantially limits one or more of that person's major life activities, (2) has a record of such an impairment, or, (3) is regarded by the covered entity as having such an impairment.

To understand the meaning of the term "disability," it is necessary to understand, a preliminary matter, what is meant by the terms "physical or mental impairment," "major life activity," and "substantially limits." Each of these terms is discussed below.

Section 1630.2(h) Physical or Mental Impairment

This term adopts the definition of the term "physical or mental impairment" found in the regulations implementing section 504 of the Rehabilitation Act at 34 CFR part 104. It defines physical or mental impairment as any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of several body systems, or any mental or psychological disorder.

The existence of an impairment is to be determined without regard to mitigating measures such as medicines or prosthetic devices. *See* Senate Report at 23, House Labor Report at 52, House Judiciary Report at 28. For example, an individual with epilepsy would be considered to have an impairment even if the symptoms of the disorder were completely controlled by medicine. Similarly, an individual with hearing loss would be considered to have an impairment even if the condition were correctable through the use of a hearing aid.

It is important to distinguish between conditions that are impairments and physical, psychological, environmental, cultural and economic characteristics that are not impairments. The definition of the term "impairment" does not include physical characteristics such as eye color, hair color, left-handedness, or height, weight or muscle tone that are within "normal" range and are not the result of a physiological disorder. Nor does the definition include common personality traits such as poor judgment or a quick temper where these are not symptoms of a mental or psychological disorder. Environmental, cultural, or economic disadvantages such as poverty, lack of education or a prison record are not impairments. Advanced age, in and of itself, is also not an impairment. However, various medical conditions commonly associated with age, such as hearing loss, osteoporosis, or arthritis would constitute impairments within the meaning of these regulations. See Senate Report at 22–23; House Labor Report at 51–52; House Judiciary Report at 28–29.

Section 1630.2(i) Major Life Activities

This term adopts the definition of the term "major life activities" found in the regulations implementing section 504 of the Rehabilitation Act at 34 CFR part 104. "Major life activities" are those basic activities that the average person in the general population can perform with little or no difficulty. Major life activities include caring for oneself, performing manual tasks, walking, seeing, breathing, learning, working. This list is not exhaustive. For example, other major life activities include, but are not limited to, sitting, standing, lifting, and reaching. See

Senate Report at 22; House Labor Report at 52; House Judiciary Report at 28.

Section 1630.2(j) Substantially Limits

Determining whether a physical or mental impairment exists is only the first step in determining whether or not an individual is disabled. Many impairments do not impact an individual's life to the degree that they constitute disabling impairments. An impairment rises to the level of disability if the impairment substantially limits one or more of the individual's major life activities. Multiple impairments that combine to substantially limit one or more of an individual's major life activities also constitute a disability.

An impairment that prevents an individual from performing a major life activity substantially limits that major life activity. For example, an individual whose legs are paralyzed is substantially limited in the major life activity of walking becasue he or she is unable, due to the impairment, to perform that major life activity.

Alternatively, an impairment is substantially limiting if it significantly restricts the condition, manner or duration under which an individual can perform a particular major life activity as compared to the average person in the general population. For example, an individual who uses artificial legs is substantially limited in the major life activity of walking because the individual can only perform that major life activity in a significantly restricted manner, *i.e.*, only with the use of prosthetic devices. An individual is also substantially limited in the major life activity of walking if the individual can only walk for very brief periods of time. Similarly, a diabetic who without insulin would lapse into a coma would be substantially limited because the individual can only perform major life activities with the aid of medication. See Senate Report at 23; House Labor Report at 52. It should be noted that the term "average person" is not intended to imply a precise mathematical "average."

The regulation notes several factors that should be considered in making the determination of whether an impairment is substantially limiting. These factors are (1) the nature and severity of the impairment, (2) the duration or expected duration of the impairment, and (3) the permanent or long term impact, or the expected permanent or long term impact of, or resulting from, the impairment. The term "duration," as used in this context, refers to the length of time an impairment persists, while the term "impact" refers to the residual effects of an impairment. Thus, for example, a broken leg that takes eight weeks to heal is an impairment of fairly brief duration, However, if the broken leg heals improperly that "impact" of the impairment would be the resulting permanent limp.

The determination of whether an individual is substantially limited in a major life activity must be made on a case by case basis. An individual is not substantially limited in a major life activity if the limitation, when viewed in light of the factors noted above, does not amount to a significant restriction when compared with the abilities of the average person. For example, an individual who has once been able to walk at an extraordinary speed would not be substantially limited in the major life activity of walking if, as a result of a physical impairment, he or she were only able to walk at an average speed, or even at moderately below average speed.

It is important to remember that the restriction on the performance of the major life activity must be the result of a condition that is an impairment. As noted earlier, advanced age, physical or personality characteristics, and environmental, cultural, and economic disadvantages are not impairments. Consequently, even if such factors substantially limit an individual's ability to perform a major life activity, this limitation will not constitute a disability. For example, an individual who is unable to read because he or she was never taught to read would not be an individual with a disability because lack of education is not an impairment. However, an individual who is unable to read because of dyslexia would be an individual with a disability because dyslexia, a learning disability, is an impairment.

An individual who is not substantially limited with respect to any other major life activity may be substantially limited with respect to the major life activity of working. The determination of whether an individual is substantially limited in working must also be made on a case by case basis. If an individual is substantially limited in another major life activity, it is not necessary to consider whether he or she is substantially limited in working.

The regulation lists specific factors that should be used in making the determination of whether the limitation in working is "substantial." These factors are:

(1) The geographical areas to which the individual has reasonable access;

(2) The job from which the individual has been disqualified because of an impairment, and the number and types of jobs utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (class of jobs); and/or

(3) The job from which the individual has been disqualified because of an impairment, and the number and types of other jobs not utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (broad range of jobs in various classes).

Thus, an individual is not substantially limited in working just because he or she is unable to perform a particular job for one employer, or because he or she is unable to perform a specialized job or profession requiring extraordinary skill, prowess or talent. For example, a surgeon who is no longer able to perform surgery because of an impairment that results in a slightly shaky hand would not be substantially limited in working merely because of the inability to perform this chosen specialty. This is so because the surgeon would only be excluded from a narrow range of jobs, and would still be able to perform various other positions, in the same class, utilizing his or her training as a physician. For instance, the surgeon could continue to examine patients and advise on the need for surgery, or teach medicine or surgical techniques within the same geographical area. Nor would a professional baseball pitcher who develops a bad elbow and can no longer throw a baseball be considered substantially limited in the major life activity of working. In both examples, the individuals are not substantially limited in the ability to perform any other major life activity and, with regard to the major life activity of working, are only unable to perform a particular specialized job. See *Forrisi* v. *Bowen*, 794 F.2d 931 (4th Cir. 1986); *Jasany* v. *U.S. Postal Service*, 755 F.2d 1244 (6th Cir. 1985); *E.E. Black, Ltd.* v. *Marshall*, 497 F. Supp. 1088 (D. Hawaii 1980).

On the other hand, an individual does not have to be totally unable to work in order to be considered substantially limited in the major life activity of working. An individual is substantially limited in working if the individual is significantly restricted in the ability to perform a class of jobs or a broad range of jobs in various classes, when compared with the ability of the average person with comparable qualifications to perform those same jobs. For example, an individual who has a back condition that prevents the individual from performing any heavy labor job would be substantially limited in the major life activity of working because the individual's impairment eliminates his or her ability to perform a class of jobs. This would be so even if the individual were able to perform jobs in another class, *e.g.*, the class of semi-skilled jobs. Similarly, suppose an individual has an allergy to a substance found in most high rise office buildings, but seldom found elsewhere, that makes breathing extremely difficult. Since this individual would be substantially limited in the ability to perform the broad range of jobs in various classes that are conducted in high rise office buildings within the geographical area to which he or she has reasonable access, he or she would be substantially limited in working.

If an individual has a "mental or physical impairment" that "substantially limits" his or her ability to perform one or more "major life activities," that individual will satisfy the first part of the regulatory definition of "disability" and will be considered an individual with a disability. An individual who satisfies this first part of the definition of the term "disability" is not required to demonstrate that he or she satisfies either of the other parts of the definition. However, if an individual is unable to satisfy this part of the definition, he or she may be able to satisfy one of the other parts of the definition.

Section 1630.2(k) Record of a Substantially Limiting Condition

The second part of the definition provides that an individual with a record of an impairment that substantially limits a major life activity is an individual with a disability. The intent of this provision, in part, is to ensure that people are not discriminated against because of a history of disability. For example, this provision protects former cancer patients from discrimination based on their prior medical history. This provision also ensures that individuals are not discriminated against because they have

been misclassified as disabled. For example, individuals misclassified as learning disabled are protected from discrimination on the basis of that erroneous classification. Senate Report at 23; House Labor Report at 52–53; House Judiciary Report at 29.

This part of the definition is satisified if a record relied on by an employer indicates that the individual has or has had a substantially limiting impairment. The impairment indicated in the record must be an impairment that would substantially limit one or more of the individual's major life activities. There are many types of records that could potentially contain this information, including but not limited to, education, medical employment or other records.

The fact that an individual has a record of being a disabled veteran, or of disability retirement, or is classified as disabled for other purposes does not guarantee that the individual will satisfy the definition of "disability" under these regulations. Other statutes, regulations and programs may have a definition of "disability" that is not the same as the definition set forth in the ADA and contained in these regulations. Accordingly, in order for an individual who has been classified in a record as "disabled" for some other purpose to be considered disabled for purposes of these regulations, the impairment indicated in the record must be a physical or mental impairment that substantially limits one or more of the individual's major life activities.

Section 1630.2(l) Regarded as Substantially Limited in a Major Life Activity

If an individual cannot satisfy either the first part of the definition of "disability" or the second "record of" part of the definition, he or she may be able to satisfy the third part of the definition. The third part of the definition provides that an individual who is regarded by an employer or other covered entity as having an impairment that substantially limits a major life activity is an individual with a disability.

There are three different ways in which an individual may satisfy the definition of "being regarded as having a disability":

(1) The individual may have an impairment which is not substantially limiting but is perceived by the employer or other covered entity as constituting a substantially limiting impairment;

(2) The individual may have an impairment which is only substantially limiting because of the attitudes of others toward the impairment; or

(3) The individual may have no impairment at all but is regarded by the employer or other covered entity as having a substantially limiting impairment. Senate Report at 23; House Labor Report at 53; House Judiciary Report at 29.

An individual satisfies the first part of this definition if the individual has an impairment that is not substantially limiting, but the covered entity perceives the impairment as being substantially limiting. For example, an employee with controlled high blood pressure that is not, in fact, substantially limiting who is reassigned to less strenuous work because of the employer's unsubstantiated fears that the individual will suffer a heart attack if he or she continues to perform strenuous work would be "regarded as" disabled.

An individual satisfies the second part of the "regarded as" definition if the individual has an impairment that is only substantially limiting because of the attitude of others toward the condition. For example, an individual may have a prominent facial scar or disfigurement, or may have a condition that periodically causes an involuntary jerk of the head but does not limit the individual's major life activities. If an employer discriminates against such an individual because of the negative reactions of customers, the employer would be regarding the individual as disabled and acting on the basis of that perceived disability. *See* Senate Report at 24; House Labor Report at 53; House Judiciary Report at 30–31.

An individual satisfies the third part of the "regarded as" definition of "disability" if the employer or other covered entity erroneously believes the individual has a substantially limiting impairment that the individual actually does not have. This situation could occur, for example, if an employer discharged an employee in response to a rumor that the employee is infected with Human Immunodeficiency Virus (HIV). Even though the rumor is totally unfounded and the individual has no impairment at all, the individual is considered an individual with a disability because the employer perceived of this individual as being disabled. Thus, in this example, the employer, by discharging this employee, is discriminating on the basis of disability.

In determining whether or not an individual is regarded as substantially limited in the major life activity of working, it should be assumed that all similar employers would apply the same exclusionary qualification standard that the employer charged with discrimination has used. The determination of whether there is a substantial limitation in working is contingent upon the number and types of jobs from which the individual is excluded because of an impairment. An assessment of the number and types of jobs from which an individual "regarded as" disabled in working would be excluded can only be achieved if the qualification standard of the employer charged with discrimination is attributed to all similar employers. Were it otherwise, an employer would be able to use a discriminatory qualification standard as long as the standard was not widely followed.

For example, suppose an individual has a heart murmur that has gone undetected and has not caused any limitations on the individual's activities. In the course of a routine medical examination given to all newly employed heavy machine operators, the murmur is discovered. The employer then withdraws the offer of employment because it believes the heart murmur disqualifies the individual from operating the heavy machinery. Assuming all employers hiring heavy machine operators use this standard, the individual would be excluded from the broad range of jobs requiring the use of heavy machinery. Therefore, the employer is regarding the impairment as a substantial limitation of the major life activity of working and has acted on the basis of that perception.

Frequently Disabling Impairments

The ADA, like the Rehabilitation Act of 1973, does not attempt a "laundry list" of impairments that are "disabilities." The determination of whether an individual has a disability is not based on the name or diagnosis of the impairment the person has, but rather on the effect of that impairment on the life of the individual. Some impairments may be disabling for particular individuals but not for others, depending on the stage of the disease or disorder, the presence of other impairments that combine to make the impairment disabling or any number of other factors.

There are, however, a number of impairments that far more often than not result in disability. The following list is provided to indicate the types of impairments that usually are disabling. However, an individual should not automatically be considered an individual with a disability merely because he or she has one of the impairments indicated on this list. Rather, such an individual is an individual with a disability only if the impairment impacts on the individual to such a degree that it substantially limits a major life activity. Commonly disabling impairments include substantial orthopedic, visual, speech, and hearing impairments, tuberculosis, HIV infection, AIDS, cerebral palsy, epilepsy, muscular dystrophies, multiple sclerosis, cancers, heart disease, diabetes, mental retardation, and emotional or mental illness.

By contrast, temporary, non-chronic impairments of short duration, with little or no long term or permanent impact, are usually not disabilities. Such impairments may include, but are not limited to, broken limbs, sprained joints, concussions, appendicitis, and influenza. Similarly, except in rare and limiting circumstances, obesity is not considered a disabling impairment.

Section 1630.2(m) Qualified Individual with a Disability

The ADA prohibits discrimination on the basis of disability against qualified individuals with disabilities. The determination of whether an individual with a disability is "qualified" should be made in two steps. The first step is to determine if the individual satisfies the prerequisites for the position, such as possessing the appropriate educational background, employment experience, skills, licenses, etc. For example, the first step in determining whether an accountant who is paraplegic is qualified for a certified public accountant (CPA) position is to examine the individual's credentials to determine whether the individual is a licensed CPA. This is sometimes referred to in the Rehabilitation Act caselaw as determining whether the individual is "otherwise qualified" for the position. See Senate Report at 33; House Labor Report at 64–65. (See Section 1630.9 Not Making Reasonable Accommodation).

The second step is to determine whether or not the individual can perform the essential functions of the position held or desired, with or without reasonable accommodation. The purpose of this second step is to ensure that individuals with disabilities who can perform

the essential functions of the position held or desired are not denied employment opportunities because they are not able to perform marginal or peripheral functions of the position. House Labor Report at 55.

Section 1630.2(n) Essential Functions

The determination of which functions are essential may be critical to the determination of whether or not the individual with a disability is qualified. The essential functions are those functions that the individual who holds the position must be able to perform unaided or with the assistance of a reasonable accommodation.

The inquiry into whether a particular function is essential initially focuses on whether the employer actually requires employees in the position to perform the functions that the employer asserts are essential. For example, an employer may state that typing is an essential function of a position. If, in fact, the employer has never required any employee in that particular position to type, this will be evidence that typing is not actually an essential function of the position.

If the individual who holds the position is actually required to perform the function the employer asserts is an essential function, the inquiry will then center around whether removing the function would fundamentally alter the position. This determination of whether or not a particular function is essential will generally include one or more of the following factors listed in the regulation.

The first factor is whether the reason the position exists is to perform that function. For example, an individual may be hired to proofread documents. The ability to proofread the documents would then be an essential function, since this is the only reason the position exists.

The second factor in determining whether a function is essential is the number of other employees available to perform that job function or among whom the performance of that job function can be distributed. This may be a factor either because the total number of employees is low, or because of the fluctuating demands of the business operations. For example, if an employer has a relatively small number of employees for the volume of work to be performed, it may be necessary that each employee perform a multitude of different functions. Therefore, the performance of those functions by each employee becomes more critical and the options for reorganizing the work become more limited. In such a situation, functions that might not be essential if there were a larger staff may become essential because the staff size is small compared to the volume of work that has to be done. *See Treadwell* v. *Alexander*, 707 F.2d 473 (11th Cir. 1983).

A similar situation might occur in a larger work force if the workflow follows a cycle of heavy demand for labor intensive work followed by low demand periods. This type of workflow might also make the performance of each function during the peak periods more critical and might limit the employer's flexibility in reorganizing operating procedures. *See Dexler* v. *Tisch*, 660 F. Supp. 1418 (D. Conn. 1987).

The third factor is the degree of expertise or skill required to perform the function. In certain professions and highly skilled positions the employee is hired for his or her expertise or ability to perform the particular function. In such a situation, the performance of that specialized task would be an essential function.

Whether a particular function is essential is a factual determination that must be made on a case by case basis. In determining whether or not a particular function is essential, all relevant evidence should be considered. The regulation lists various types of evidence, such as an established job description, that may be considered in determining whether a particular function is essential. Since the list is not exhaustive, other relevant evidence may also be presented. Greater weight will not be granted to the types of evidence included on the list than to the types of evidence not listed.

The employer's judgment as to what functions are essential and written job descriptions prepared before advertising or interviewing applicants for the job are among the relevant evidence to be considered in determining whether a particular function is essential. The work experience of past employees in the job or of current employees in similar jobs is also relevant to the determination of whether a particular function is essential. *See* H.R. Conf. Rep. No. 101-596, 101st Cong., 2d Sess. 58 (1990) [hereinafter Conference Report]; House Judiciary Report at 33-34. See also *Hall* v. *U.S. Postal Service*, 857 F.2d 1073 (6th Cir. 1988).

The time spent performing the particular function may be an indicator of whether that function is essential. For example, if an employee spends the vast majority of his or her time working at a cash register, this would be evidence that operating the cash register is an essential function. The consequence of failing to require the employee to perform the function may be another indicator of whether a particular function is essential. For example, although a firefighter may not regularly have to carry an unconscious adult out of a burning building, the consequence of failing to require the firefighter to be able to perform this function would be serious.

It is important to note that the inquiry into essential functions is not intended to second guess an employer's business judgment with regard to production standards, whether qualitative or quantitative, nor to require employers to lower such standards. (See section 1630.10 Qualification Standards, Tests and Other Selection Criteria). If an employer requires its typists to be able to type 75 words per minute, it will not be called upon to explain why a typing speed of 65 words per minute would not be adequate. Similarly, if a hotel requires its service workers to clean 16 rooms a day, it will not have to explain why it chose a 16 room requirement rather than a 10 room requirement. However, if an employer does not require 75 words per minute typing or the cleaning of 16 rooms, it will have to show that it actually imposes such requirements on its employees in fact, and not simply on paper. It should also be noted that, if it is alleged that the employer intentionally selected the particular level of production to exclude individuals with disabilities, the employer may have to offer a legitimate, nondiscriminatory reason for its selection.

Section 1630.2(o) Reasonable Accommodation

An individual is considered a "qualified individual with a disability" if the individual can perform the essential functions of the position held or desired with or without reasonable accommodation. In general, an accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities. There are three categories of reasonable accommodation. These are (1) accommodations that are required to ensure equal opportunity in the application process; (2) accommodations that enable the employer's employees with disabilities to perform the essential functions of the position held or desired; and (3) accommodations that enable the employer's employees with disabilities to enjoy the same benefits and privileges of employment as are enjoyed by employees without disabilities. It should be noted that nothing in these regulations prohibits employers or other covered entities from providing accommodations beyond those required by these regulations.

The regulations list the examples, specified in title I of the ADA, of the most common types of accommodation that an employer or other covered entity may be required to provide. There are any number of other specific accommodations that may be appropriate for particular situations but are not specifically mentioned in this listing. This listing is not intended to be exhaustive of accommodation possibilities. For example, other accommodations could include permitting the use of accrued paid leave or providing additional unpaid leave for necessary treatment, making employer provided transportation accessible, providing personal assistants—such as a page turner or travel attendant, and providing reserved parking spaces. Senate Report at 31; House Labor Report at 62; House Judiciary Report at 39.

The accommodations included on the list of reasonable accommodations are generally self explanatory. However, there are a few that require further explanation. One of these is the accommodation of making existing facilities used by employees readily accessible to, and usable by, individuals with disabilities. This accommodation includes both those areas that must be accessible for the employee to perform essential job functions, as well as non-work areas used by the employer's employees for other purposes. For example, accessible break rooms, lunch rooms, training rooms, etc., may be required as reasonable accommodations.

Another of the potential accommodations listed is "job restructuring." An employer or other covered entity may restructure a job by reallocating or redistributing nonessential, marginal job functions. For example, an employer may have two jobs, each of which entails the performance of a number of marginal functions. The employer hires a

qualified individual with a disability who is able to perform some of the marginal functions of each job but not all of the marginal functions of either job. As an accommodation, the employer may redistribute the marginal functions so that all of the marginal functions that the qualified individual with a disability can perform are made a part of the position to be filled by the qualified individual with a disability. The remaining marginal functions that the individual with a disability cannot perform would then be transferred to the other position. See Senate Report at 31; House Labor Report at 62.

An employer or other covered entity is not required to reallocate essential functions. The essential functions are by definition those that the individual who holds the job would have to perform, with or without reasonable accommodation, in order to be considered qualified for the position. For example, suppose a security guard position requires the individual who holds the job to inspect identification cards. An employer would not have to provide an individual who is legally blind with an assistant to look at the identification cards for the legally blind employee. In this situation the assistant would be performing the job for the individual with a disability rather than assisting the individual to perform the job. See *Coleman* v. *Darden*, 595 F.2d 533 (10th Cir. 1979).

Reassignment to another vacant position is also listed as a potential reasonable accommodation. In general, reassignment should be considered only when accommodation within the individual's current position would pose an undue hardship. Reassignment is not available to applicants. An applicant for a position must be qualified for, and be able to perform the essential functions of, the position sought with or without reasonable accommodation.

Reassignment may not be used to limit, segregate, or otherwise discriminate against employees with disabilities by forcing reassignments to undesirable positions or to designated offices or facilities. Employers should reassign the individual to an equivalent position, in terms of pay, status, etc., if the individual is qualified and if the position is vacant. An employer may reassign an individual to a lower graded position if there are no accommodations that would enable the employee to remain in the current position and there are no vacant equivalent positions for which the individual is qualified with or without reasonable accommodation. An employer is not required to promote an individual with a disability as an accommodation. See Senate Report at 31–32; House Labor Report at 63.

The determination of which accommodation is appropriate in a particular situation involves a process in which the employer and employee identify the precise limitations imposed by the disability and explore potential accommodations that would overcome those limitations. This process is discussed more fully in § 1630.9 Not Making Reasonable Accommodation.

Section 1630.2(p) Undue Hardship

An employer or other covered entity is not required to provide an accommodation that will impose an undue hardship on the operation of the employer's or other covered entity's business. The term "undue hardship" means significant difficulty or expense in, or resulting from, the provision of the accommodation. The "undue hardship" provision is sensitive to the financial realities of the particular employer or other covered entity. However, the concept of undue hardship is not limited to financial difficulty. "Undue hardship" refers to any accommodation that would be unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the business. See Senate Report at 35; House Labor Report at 67.

For example, suppose an individual with a disabling visual impairment that makes it extremely difficult to see in dim lighting applies for a position as a waiter in a nightclub and requests that the club be brightly lit as a reasonable accommodation. Although the individual may be able to perform the job in bright lighting, the nightclub will probably be able to demonstrate that that particular accommodation, though inexpensive, would impose an undue hardship if the bright lighting would destroy the ambience of the nightclub and/or make it difficult for the customers to see the stage show. The fact that that particular accommodation poses an undue hardship, however, only means that the employer is not required to provide that accommodation. If there is another accommodation that will not create an undue hardship, the employer would be required to provide the alternative accommodation.

An employer's claim that the cost of a particular accommodation will impose an undue hardship will be analyzed in light of the factors outlined in the regulations. In part, this analysis requires a determination of whose financial resources should be considered in deciding whether the accommodation is unduly costly. In many cases the financial resources of the employer or other covered entity in its entirety should be considered in determining whether the cost of an accommodation poses an undue hardship. In other cases, consideration of the financial resources of the employer or other covered entity as a whole may be inappropriate because it may not give an accurate picture of the financial resources available to the particular site that will actually be required to provide the accommodation. See House Labor Report at 68–69; House Judiciary Report at 40–41; see also Conference Report at 56–57.

If the employer or other covered entity asserts that only the financial resources of the site where the individual will be employed should be considered, the regulations require a factual determination of the relationship between the employer or other covered entity and the site that will provide the accommodation. As an example, suppose that an independently owned fast food franchise that receives no money from the franchisor refuses to hire an individual with a hearing impairment because it asserts that it would be an undue hardship to provide an interpreter to enable the individual to participate in monthly staff meetings. Since the financial relationship between the franchisor and the franchise is limited to payment of an annual franchise fee, only the financial resources of the franchise would be considered in determining whether or not providing the accommodation would be an undue hardship. See House Labor Report at 68; House Judiciary Report at 40.

If the employer or other covered entity can show that the cost of the accommodation would impose an undue hardship, it will still be required to provide the accommodation if the funding is available from another source, *e.g.*, a State vocational rehabilitation agency, or if Federal, State or local tax deductions or tax credits are available to offset the cost of the accommodation. If the employer or other covered entity receives or is eligible to receive monies from an external source that would pay the entire cost of the accommodation, it cannot claim cost as an undue hardship. To the extent that such monies pay or would pay for only part of the cost of the accommodation, only that portion of the cost of the accommodation that could be recovered—the final net cost to the entity—may be considered in determining undue hardship.

The individual with a disability requesting the accommodation must also be given the option of providing the accommodation or of paying that portion of the cost which constitutes the undue hardship on the operation of the business. As with outside funding available to enable the employer or other covered entity to provide the reasonable accommodation, only the net cost of the accommodation to the employer or other covered entity is to be included in the calculation of undue hardship. (See § 1630.9 Not Making a Reasonable Accommodation). See Senate Report at 36; House Labor Report at 69.

Section 1630.2(r) Direct Threat

An employer may require, as a qualification standard, that an individual not pose a direct threat to the health or safety of himself/herself or others. Like any other qualification standard, such a standard must apply to all applicants or employees and not just to individuals with disabilities. If, however, an individual poses a direct threat as a result of a disability, the employer must determine whether a reasonable accommodation would either eliminate the risk or reduce it to an acceptable level. If no accommodation exists that would either eliminate or reduce the risk, the employer may refuse to hire an applicant or may discharge an employee who poses a direct threat.

An employer, however, is not permitted to deny an employment opportunity to an individual with a disability merely because of a slightly increased risk. The risk can only be considered when it poses a significant risk, *i.e.*, high probability, of substantial harm; a speculative or remote risk is insufficient. See Senate Report at 27; House Report Labor Report at 56–57; House Judiciary Report at 45.

Determining whether an individual poses a significant risk of substantial harm to others must be made on a case by case basis. The employer should identify the specific risk posed by the individual. For individuals with mental or emotional disabilities, the

employer must identify the specific behavior on the part of the individual that would pose the direct threat. For individuals with physical disabilities, the employer must identify the aspect of the disability that would pose the direct threat. The employer should then consider the three factors listed in the regulations:

(1) The duration of the risk;

(2) The nature and severity of the potential harm; and

(3) The likelihood that the potential harm will occur.

Such consideration must rely on objective, factual evidence—not on subjective perceptions, irrational fears, patronizing attitudes, or stereotypes—about the nature or effect of a particular disability, or of disability generally. See Senate Report at 27; House Labor Report at 56–57; House Judiciary Report at 45–46. See also *Strathie* v. *Department of Transportation,* 716 F.2d 227 (3d Cir. 1983).

An employer is also permitted to require that an individual with a disability not pose a direct threat of harm to his or her own safety or health. If performing the particular functions of a job would result in a high probability of substantial harm to the individual, the employer would reject or discharge the individual unless a reasonable accommodation that would not cause an undue hardship would avert the harm. For example, an employer would not be required to hire an individual, disabled by narcolepsy, who frequently and unexpectedly loses consciousness for a carpentry job the essential functions of which require the use of power saws and other dangerous equipment, where no accommodation exists that will reduce or eliminate the risk.

The assessment that there exists a high probability of substantial harm to the individual with a disability must be strictly based on valid medical analyses or on other objective evidence. This determination must be based on individualized factual data rather than on stereotypic or patronizing assumptions and must consider potential reasonable accommodations. Generalized fears about risks from the employment environment, such as exacerbation of the disability caused by stress, cannot be used by an employer to disqualify an individual with a disability. Nor can generalized fears about risks to individuals with disabilities in the event of an evacuation or other emergency be used by an employer to disqualify an individual with a disability. See Senate Report at 56; House Labor at 73–74; House Judiciary Report at 45. See also *Mantolete* v. *Bolger,* 767 F.2d 1416 (9th Cir. 1985); *Bentivegna* v. *U.S. Department of Labor,* 694 F.2d 619 (9th Cir. 1982).

Section 1630.3 Exceptions to the Definitions of "Disability" and "Qualified Individual with a Disability"

Section 1630.3 (a)–(c) Illegal Use of Drugs

The regulations provide that an individual currently engaging in the illegal use of drugs is not an individual with a disability for purposes of this part when the employer or other covered entity acts on the basis of such use. Illegal use of drugs refers both to the use of unlawful drugs such as cocaine and to the unlawful use of prescription drugs.

Employers, for example, may discharge or deny employment to persons who illegally use drugs, on the basis of such use, without fear or being held liable for discrimination. The term "currently engaging" is not intended to be limited to the use of drugs on the day of, or within a matter of days or weeks before, the employment action in question. Rather, the provision is intended to apply to the illegal use of drugs that has occurred recently enough to indicate that the individual is actively engaged in such conduct. See Conference Report at 64.

Individuals who are erroneously perceived as engaging in the illegal use of drugs, but are not in fact illegally using drugs are not excluded from the definitions of the terms "disability" and "qualified individual with a disability." Individuals who are no longer illegally using drugs and who have either been rehabilitated successfully or are in the process of completing a rehabilitation program are, likewise, not excluded from the definitions of those terms. The term "rehabilitation program" refers to both in-patient and out-patient programs, as well as to appropriate employee assistance or other programs that provide professional (not necessarily medical) assistance and counseling for individuals who illegally use drugs. See Conference Report at 64; see also House Labor Report at 77; House Judiciary Report at 47.

An individual cannot demonstrate that he or she is no longer engaging in the illegal use of drugs by simply showing participation in a drug treatment program. It is essential that the individual offer evidence, such as drug test results, to prove that he or she is not currently engaging in the illegal use of drugs. Employers are entitled to seek reasonable assurances that no illegal use of drugs is occurring or has occurred recently enough so that continuing use is a real and ongoing problem. An employer, such as a law enforcement agency, may also be able to impose a qualification standard that excludes individuals with a history of illegal use of drugs if it can show that the standard is job-related and consistent with business necessity. (See § 1630.10 Qualification Standards, Tests and Other Selection Criteria) See Conference Report at 64.

Section 1630.4 Discrimination Prohibited

This provision prohibits discrimination against a qualified individual with a disability in all aspects of the employment relationship. The range of employment decisions covered by this nondiscrimination mandate is to be construed in a manner consistent with the regulations implementing section 504 of the Rehabilitation Act of 1973.

These regulations are not intended to limit the ability of covered entities to choose and maintain a qualified workforce. Employers can continue to use job-related criteria to select qualified employees, and can continue to hire employees who can perform the essential functions of the job.

Section 1630.5 Limiting, Segregating and Classifying

This provision and the several provisions that follow describe various specific forms of discrimination that are included within the general prohibition of § 1630.4. Covered entities are prohibited from restricting the employment opportunities of qualified individuals with disabilities on the basis of stereotypes and myths about the individual's disability. Rather, the capabilities qualified individuals with disabilities must be determined on an individualized, case by case basis. Covered entities are also prohibited from segregating qualified employees with disabilities into separate work areas or into separate lines of advancement.

Thus, for example, it would be a violation of these regulations for an employer to limit the duties of an employee with a disability based on a presumption of what is best for an individual with such a disability, or on a presumption about the abilities of an individual with such a disability. It would be a violation of these regulations for an employer to adopt a separate track of job promotion or progression for employees with disabilities based on a presumption that employees with disabilities are uninterested in, or incapable of, performing particular jobs. Similarly, it would be a violation for an employer to assign or reassign (as a reasonable accommodation) employees with disabilities to one particular office or installation, or to require that employees with disabilities only use particular employer provided non-work facilities such as segregated break-rooms, lunch rooms, or lounges. It would also be a violation of these regulations to deny employment to an applicant or employee with a disability based on generalized fears about the safety of an individual with such a disability, or based on generalized assumptions about the absenteeism rate of an individual with such a disability.

In addition, it should also be noted that these regulations are intended to require that employees with disabilities be accorded equal access to whatever health insurance coverage the employer provides to other employees. These regulations do not, however, affect pre-existing condition clauses included in health insurance policies offered by employers. Consequently, employers may continue to offer policies that contain such clauses, even if they adversely affect individuals with disabilities, so long as the clauses are not used as a subterfuge to evade the purposes of these regulations.

So, for example, it would be permissible for an employer to offer an insurance policy that limits coverage for certain procedures or treatments to a specified number per year. Thus, if a health insurance plan provided coverage for five blood transfusions a year to all covered employees, it would not be discriminatory to offer this plan simply because a hemophiliac employee may require more than five blood transfusions annually. However, it would not be permissible to limit or deny the hemophiliac employee coverage for other procedures, such as heart surgery or the setting of a broken leg, even though the plan would not have to provide coverage for the additional blood transfusions that may be involved in these procedures. Likewise, limits may be placed on reimbursements for certain procedures or on the types of drugs or procedures covered (e.g. limits on the number

of permitted X-rays or non-coverage of experimental drugs or procedures), but that limitation must be applied equally to individuals with and without disabilities. See Senate Report at 28–29; House Labor Report at 58–59; House Judiciary Report at 36.

Leave policies or benefit plans that are uniformly applied do not violate these regulations simply because they do not address the special needs of every individual with a disability. Thus, for example, an employer that reduces the number of paid sick leave days that it will provide to all employees, or reduces the amount of medical insurance coverage that it will provide to all employees, is not in violation of these regulations, even if the benefits reduction has an impact on employees with disabilities in need of greater sick leave and medical coverage. Benefits reductions adopted for discriminatory reasons are in violation of these regulations. See *Alexander* v. *Choate*, 469 U.S. 287 (1985). See Senate Report at 85; House Labor Report at 137. (See also, the discussion at Section 1630.16(f) Health Insurance, Life Insurance, and Other Benefit Plans).

Section 1630.8 Contractual or Other Arrangements

An employer or other covered entity may not do through a contractual or other relationship what it is prohibited from doing directly. This provision only applies to situations where an employer or other covered entity has entered into a contractual relationship that has the effect of discriminating against its own employees or applicants with disabilities. Accordingly, it would be a violation for an employer to participate in a contractual relationship that results in discrimination against the employer's employees with disabilities in hiring, training, promotioin, or in any other aspect of the employment relationship. This provision applies whether or not the employer or other covered entity intended for the contractual relationship to have the discriminatory effect.

The regulation notes that this provision applies to parties on either side of the contractual or other relationship. This is intended to highlight that an employer whose employees provide services to others, like an employer whose employees receive services, must ensure that those employees are not discriminated against on the basis of disability. Thus a copier company would be required to ensure the provision of any reasonable accommodation necessary to enable its copier service representative with a disability to service a client's machine.

The existence of the contractual relationship adds no new obligations, beyond those already imposed by these regulations. The employer, therefore, is not liable through the contractual arrangement for any discrimination by the contractor against the contractor's own employees or applicants, although the contractor, as an employer, may be liable for such discrimination.

An employer or other covered entity, on the other hand, cannot evade the obligations imposed by these regulations by engaging in a contractual or other relationship. For example, an employer cannot avoid its responsibility to make reasonable accommodation subject to the undue hardship limitation through a contractual arrangement. See Conference Report at 59; House Labor Report at 59–61; House Judiciary Report at 36–37.

To illustrate, assume that an employer is seeking to contract with a company to provide training for its employees. Any responsibilities of reasonable accommodation applicable to the employer in providing the training remain with that employer even if it contracts with another company for this service. Thus, if the training company were planning to conduct the training at an inaccessible location, thereby making it impossible for an employee who uses a wheelchair to attend, the employer would have a duty to make reasonable accommodation unless to do so would impose an undue hardship. Under these circumstances, appropriate accommodations might include (1) having the training company identify accessible training sites and relocate the training program; (2) having the training company make the training site accessible; (3) directly making the training site accessible or providing the training company with the means by which to make the site accessible; (4) identifying and contracting with another training company that uses accessible sites; or (5) any other accommodation that would result in making the training available to the employee.

As another illustration, assume that instead of contracting with a training company, the employer contracts with a hotel to host a conference for its employees. The employer will have a duty to ascertain and ensure the accessibility of the hotel and its conference facilities. To fulfill this obligation the employer could, for example, inspect the hotel first-hand or ask a local disability group to inspect the hotel. Alternatively, the employer could ensure that the contract with the hotel specifies it will provide accessible guest rooms for those who need them and that all rooms to be used for the conference, including exhibit and meeting rooms, are accessible. If the hotel breaches this accessibility provision, the hotel may be liable to the employer, under a non-ADA breach of contract theory, for the cost of any accommodation needed to provide access to the hotel and conference, and for any other costs accrued by the employer. (In addition, the hotel may also be independently liable under Title III of the ADA). However, this would not relieve the employer of its responsibility under these regulations nor shield it from charges of discrimination by its own employees. See House Labor Report at 40; House Judiciary Report at 37.

Section 1630.8 Relationship or Association with an Individual with a Disability

This provision is intended to protect any qualified individual, whether or not that individual has a disability, from discrimination because that person is known to have an association or relationship with an individual who has a disability. This protection is not limited to those who have a familial relationship with an individual with a disability.

To illustrate the scope of this provision, assume that a qualified applicant without a disability applies for a job and discloses to the employer that his or her spouse has a disability. The employer thereupon declines to hire the applicant because the employer believes that the applicant would have to miss work or frequently leave work early in order to care for the spouse. Such a refusal to hire would be prohibited by this provision. Similarly, this provision would prohibit an employer from discharging an employee because the employee does volunteer work with AIDS patients, and the employer fears that the employee may contract the disease.

It should be noted, however, that an employer need not provide the applicant or employee without a disability with a reasonable accommodation because that duty only applies to qualified applicants or employees with a disability. Thus, for example, an employee would not be entitled to a modified work schedule as an accommodation to enable the employee to care for a spouse with a disability. See Senate Report at 30; House Labor Report at 61–62; House Judiciary Report at 38–39.

Section 1630.9 Not Making Reasonable Accommodation

The obligation to make reasonable accommodation is a form of nondiscrimination. It applies to all employment decisions and to the job application process. This obligation does not extend to the provision of adjustments or modifications that are primarily for the personal benefit of the individual with a disability. Thus, if an adjustment or modification is job-related, *e.g.*, specifically assists the individual in performing the duties of a particular job, it will be considered a type of reasonable accommodation. On the other hand, if an adjustment or modification assists the individual throughout his or her daily activities, on and off the job, it will be considered a personal item that the employer is not required to provide. Accordingly, an employer would not be required to provide an employee with a disability with a prosthetic limb, wheelchair, or eyeglasses. Nor would an employer have to provide as an accommodation any amenity or convenience that is not job-related, such as a private hot plate, hot pot or refrigerator that is not provided to employees without disabilities. See Senate Report at 31; House Labor Report at 62.

The term "supported employment," which has been applied to a wide variety of programs to assist individuals with severe disabilities in both competitive and non-competitive employment, is not synonymous with reasonable accommodation. Examples of supported employment include modified training materials, restructuring essential functions to enable an individual to perform a job, or hiring an outside professional ("job coach") to assist in job training. Whether a particular form of assistance would be required as a reasonable accommodation must be determined on an individualized, case by case basis without regard to whether that assistance is referred to as "supported employment." For example, an employer, under certain circumstances, may be required to provide modified training materials or a temporary "job coach" to assist in the training of a qualified individual with a

disability as a reasonable accommodation. However, an employer would not be required to restructure the essential functions of a position to fit the skills of an individual with a disability who is not otherwise qualified to perform the position, such as is done in certain supported employment programs. See 34 CFR part 363. It should be noted that it would not be a violation of this Part for an employer to provide any of these personal modifications or adjustments, or to engage in supported employment or similar rehabilitative programs.

The obligation to make reasonable accommodation applies to all services and programs provided in connection with employment, and to all non-work facilities provided or maintained by an employer for use by its employees. Accordingly, the obligation to accommodate is applicable to employer sponsored placement or counseling services, and to employer provided cafeterias, lounges, gymnasiums, auditoriums, transportation and the like.

The reasonable accommodation requirement is best understood as a means by which barriers to the equal employment opportunity of an individual with a disability are removed or alleviated. These barriers may, for example, be physical or structural obstacles that inhibit or prevent the access of an individual with a disability to job sites, facilities or equipment. Or they may be rigid work schedules that permit no flexibility as to when work is performed or when breaks may be taken, or inflexible job procedures that unduly limit the modes of communication that are used on the job, or the way in which particular tasks are accomplished.

The term "otherwise qualified" is intended to make clear that the obligation to make reasonable accommodation is owed only to an individual with a disability who is qualified within the meaning of § 1630.2(m) in that he or she satisfies all the skill, experience, education and other job-related selection criteria. An individual with a disability is "otherwise qualified," in other words, if he or she is qualified for a job, except that he or she needs a reasonable accommodation to be able to perform the job's essential functions.

For example, if a law firm requires that all incoming lawyers have graduated from an accredited law school and have passed the bar examination, the law firm need not provide an accommodation to an individual with a visual impairment who has not met these selection criteria. That individual is not entitled to a reasonable accommodation because the individual is not "otherwise qualified" for the position.

On the other hand, if the individual has graduated from an accredited law school and passed the bar examination, the individual would be "otherwise qualified." The law firm would thus be required to provide a reasonable accommodation, such as a reader, to enable the individual to perform the essential functions of the attorney position, unless the necessary accommodation would impose an undue hardship on the law firm. See Senate Report at 33–34; House Labor Report at 64–65.

The reasonable accommodation that is required by this regulation should provide the qualified individual with a disability with an equal employment opportunity. Equal employment opportunity means an opportunity to attain the same level of performance, or to enjoy the same level of benefits and privileges of employment as are available to the average similarly situated employee without a disability. Thus, for example, an accommodation made to assist an employee with a disability in the performance of his or her job must be adequate to enable the individual to perform the essential functions of the relevant position. The accommodation, however, does not have to be the "best" accommodation possible, so long as it is sufficient to meet the job-related needs of the individual being accommodated. Accordingly, an employer would not have to provide an employee disabled by a back impairment with a state-of-the art mechanical lifting device if it provided the employee with a less expensive or more readily available device that enabled the employee to perform the essential functions of the job. *See* Senate Report at 35; House Labor Report at 66; *see also Carter* v. *Bennett,* 840 F.2d 63 (D.C. Cir. 1988).

Employers are obligated to make reasonable accommodation only to the physical or mental limitations of a qualified individual with a disability that are known to the employer. Thus, an employer would not be expected to accommodate disabilities of which it is unaware. If an employee with a known disability is having difficulty performing his or her job, an employer may inquire whether the employee is in need of a reasonable accommodation. In general, however, it is the responsibility of the individual with a disability to inform the employer that an accommodation is needed. See Senate Report at 34; House Labor Report at 65.

Process of Determining the Appropriate Reasonable Accommodation

Once a qualified individual with a disability has requested provision of a reasonable accommodation, the employer must make a reasonable effort to determine the appropriate accommodation. The process of determining the appropriate reasonable accommodation is an informal, interactive, problem solving technique involving both the employer and the qualified individual with a disability. Although this process is described below in terms of accommodations that enable the individual with a disability to perform the essential functions of the position held or desired, it is equally applicable to accommodations involving the job application process, and to accommodations that enable the individual with a disability to enjoy equal benefits and privileges of employment. See Senate Report at 34–35; House Labor Report at 65–67.

When a qualified individual with a disability has requested a reasonable accommodation to assist in the performance of a job, the employer, using a problem solving approach, should:

(1) Analyze the particular job involved and determine its purpose and essential functions;

(2) Consult with the individual with a disability to ascertain the precise job-related limitations imposed by the individual's disability and how those limitations could be overcome with a reasonable accommodation;

(3) In consultation with the individual to be accommodated, identify potential accommodations and assess the effectiveness each would have in enabling the individual to perform the essential functions of the position; and

(4) Consider the preference of the individual to be accommodated and select and implement the accommodation that is most appropriate for both the employee and the employer.

In many instances, the appropriate reasonable accommodation may be so obvious to either or both the employer and the qualified individual with a disability that it may not be necessary to proceed in this step-by-step fashion. For example, if an employee who uses a wheelchair requests that his or her desk be placed on blocks to elevate the desktop above the arms of the wheelchair and the employer complies, an appropriate accommodation has been requested, identified, and provided without either the employee or employer being aware of having engaged in any sort of "reasonable accommodation process."

However, in some instances neither the individual requesting the accommodation nor the employer can readily identify the appropriate accommodation. For example, the individual needing the accommodation may not know enough about the equipment used by the employer or the exact nature of the work site to suggest an appropriate accommodation. Likewise, the employer may not know enough about the individual's disability or the limitations that disability would impose on the performance of the job to suggest an appropriate accommodation. Under such circumstances, it may be necessary for the employer to initiate a more defined problem solving process, such as the step-by-step process described above, as part of its reasonable effort to identify the appropriate reasonable accommodation.

This process requires the individual assessment of both the particular job at issue, and of the specific physical or mental limitations of the particular individual in need of reasonable accommodation. With regard to assessment of the job, "individual assessment" means analyzing the actual job duties and determining the true purpose or object of the job. Such an assessment is necessary to ascertain which job functions are the essential functions that an accommodation must enable an individual with a disability to perform.

After assessing the relevant job, the employer, in consultation with the individual requesting the accommodation, should make an assessment of the specific limitations imposed by the disability on the individual's performance of the job's essential functions. This assessment will make it possible to ascertain the precise barrier to the employment opportunity which, in turn, will make it possible to determine the accommodation(s) that could alleviate or remove that barrier.

If consultation with the individual in need of the accommodation still does not reveal potential appropriate accommodations, then

the employer, as part of this process, may find that technical assistance is helpful in determining how to accommodate the particular individual in the specific situation. Such assistance could be sought from the Commission, from state or local rehabilitation agencies, or from disability constituent organizations. It should be noted, however, that the failure to obtain or receive technical assistance will not excuse the employer from its reasonable accommodation obligation.

Once potential accommodations have been identified, the employer should assess the effectiveness of each potential accommodation in assisting the individual in need of the accommodation in the performance of the essential functions of the position. If more than one of these accommodations will enable the individual to perform the essential functions, the preference of the individual with a disability should be given primary consideration. However, the employer providing the accommodation has the ultimate discretion to choose between effective accommodations, and may choose the less expensive accommodation or the accommodation that is easier for it to provide.

Reasonable Accommodation Process Illustrated

The following example illustrates the informal reasonable accommodation process. Suppose a sack handler position requires that the employee pick up fifty pound sacks and carry them from the company loading dock to the storage room, and that a sack handler who is disabled by a back impairment requests a reasonable accommodation. Upon receiving the request, the employer analyzes the sack handler job and determines that the essential function and purpose of the job is not the requirement that the job holder physically lift and carry the sacks, but the requirement that the job holder cause the sack to move from the loading dock to the storage room.

The employer then meets with the sack handler to ascertain precisely the barrier posed by the individual's specific disability to the performance of the job's essential function of relocating the sacks. At this meeting the employer learns that the individual can, in fact, lift the sacks to waist level, but is prevented by his or her disability from carrying the sacks from the loading dock to the storage room. The employer and the individual agree that any of a number of potential accommodations, such as the provision of a dolly, hand truck, or cart, could enable the individual to transport the sacks that he or she has lifted.

Upon further consideration, however, it is determined that the provision of a cart is not a feasible effective option. No carts are currently available at the company, and those that can be purchased by the company are the wrong shape to hold many of the bulky and irregularly shaped sacks that must be moved. Both the dolly and the hand truck, on the other hand, appear to be effective options. Both are readily available to the company, and either will enable the individual to relocate the sacks that he or she has lifted. The sack handler indicates his or her preference for the dolly. In consideration of this expressed preference, and because the employer feels that the dolly will allow the individual to move more sacks at a time and so be more efficient than would a hand truck, the employer ultimately provides the sack handler with a dolly in fulfillment of the obligation to make reasonable accommodation.

Section 1630.9(b)

This provision states that an employer or other covered entity cannot prefer or select a qualified individual without a disability over an equally qualified individual with a disability merely because the individual with a disability will require a reasonable accommodation. In other words, an individual's need for an accommodation cannot enter into the employer's or other covered entity's decision regarding hiring, discharge, promotion, or other similar employment decisions, unless the accommodation would impose an undue hardship on the employer. See House Labor Report at 70.

Section 1630.9(d)

The purpose of this provision is to clarify that an employer or other covered entity may not compel a qualified individual with a disability to accept an accommodation, where that accommodation is neither requested nor needed by the individual. However, if a necessary reasonable accommodation is refused, the individual may not be considered qualified. For example, an individual with a visual impairment that restricts his or her field of vision but who is able to read unaided would not be required to accept a reader as an accommodation. However, if the individual were not able to read unaided and reading was an essential function of the job, the individual would not be qualified for the job if he or she refused a reasonable accommodation that would enable him or her to read. *See* Senate Report at 34; House Labor Report at 65; House Judiciary Report at 71–72.

Section 1630.10 Qualification Standards, Tests, and Other Selection Criteria

The purpose of this provision is to ensure that individuals with disabilities are not excluded from job opportunities unless they are actually unable to do the job. It is to ensure that there is a fit between job criteria and an applicant's (or employee's) actual ability to do the job. Accordingly, job criteria that even unintentionally screen out, or tend to screen out, an individual with disabilities or a class of individuals with disabilities may not be used unless the employer demonstrates that that criteria, as used by the employer, are job-related to the position to which they are being applied and are consistent with business necessity. The concept of "business necessity" has the same meaning as the concept of "business necessity" under section 504 of the Rehabilitation Act of 1973.

Selection criteria that exclude, or tend to exclude, an individual with a disability or a class of individuals with disabilities but do not concern an essential function of the job would not be consistent with business necessity.

It is possible for the use of selection criteria that concern an essential function to be consistent with business necessity. However, selection criteria that concern an essential function may not be used to exclude an individual with a disability if that individual could satisfy the criteria with the provision of a reasonable accommodation, including the adoption of an alternative, less discriminatory criterion. Experience under a similar provision of the regulations implementing section 504 of the Rehabilitation Act indicates that challenges to selection criteria are, in fact, most often resolved by reasonable accommodation. It is therefore anticipated that challenges to selection criteria brought under these regulations will generally be resolved in a like manner.

This provision is applicable to all types of selection criteria, including requirements that an employee not pose a direct threat to self or others, vision or hearing requirements, walking requirements, lifting requirements, and employment tests. See Senate Report at 37–39; House Labor Report at 70–72; House Judiciary Report at 42. As previously noted, however, it is not the intent of these regulations to second guess an employer's business judgment with regard to production standards. (See § 1630.2(n) Essential Functions). Consequently, production standards will generally not be subject to a challenge under this provision.

The Uniform Guidelines on Employee Selection Procedures (UGESP) 29 CFR part 1607 do not apply to the Rehabilitation Act and are similarly inapplicable to these regulations.

Section 1630.11 Administration of Tests

The intent of this provision is to further emphasize that individuals with disabilities are not to be excluded from jobs that they can actually perform merely because a disability prevents them from taking a test, or negatively influences the results of a test, that is prerequisite to the job. Read together with the reasonable accommodation requirement of § 1630.9, this provision requires that employment tests be administered to eligible applicants or employees with disabilities that impair sensory, manual, or speaking skills in formats that do not require the use of the impaired skill.

The employer or other covered entity is only required to provide such reasonable accommodation if it knows that the individual is disabled and that the disability impairs sensory, manual or speaking skills. Thus, for example, it would be unlawful to administer a written employment test to an individual that the employer knows is disabled with dyslexia and unable to read. In such a case, as a reasonable accommodation and in accordance with this provision, an alternative oral test should be administered to that individual. By the same token, a written test may need to be substituted for an oral test if the applicant taking the test is an individual with a disability that impairs speaking skills or impairs the processing of auditory information.

Other alternative or accessible test modes or formats include the administration of tests in large print or braille, or via a reader or sign interpreter. An employer may also be

required, as a reasonable accommodation, to allow more time to complete the test. In addition, the employer's obligation to make reasonable accommodation extends to ensuring that the test site is accessible. See Senate Report at 37–38; House Labor Report at 70–72; House Judiciary Report at 42; *see also Stutts* v. *Freeman*, 694 F.2d 666 (11th Cir. 1983); *Crane* v. *Dole*, 617 F. Supp. 156 (D.D.C. 1985).

The provision does not require that an employer offer every applicant his or her choice of test format. Rather, this provision only requires that an employer provide, upon request, alternative, accessible tests to individuals with disabilities that impair sensory, manual, or speaking skills needed to take the test.

This provision does not apply to employment tests that require the use of sensory, manual, or speaking skills where the tests are intended to measure those skills. Thus, an employer could require that an applicant with dyslexia take a written test for a particular position if the ability to read is essential to the effective performance of the job. However, the results of such a test could not be used to exclude an individual with a disability unless the skill was necessary to perform an essential function of the position and no reasonable accommodation was available to enable the individual to perform that function, or the necessary accommodation would impose an undue hardship.

Section 1630.13 Prohibited Medical Examinations and Inquiries

Section 1630.13(a) Pre-employment Examination or Inquiry

This provision makes clear that an employer cannot inquire as to whether an individual has a disability at the pre-offer stage of the selection process. Employers may ask questions that relate to the applicant's ability to perform job-related functions. However, these questions should not be phrased in terms of disability. An employer, for example, may ask whether the applicant has a driver's license, if driving is a job function, but may not ask whether the applicant has a visual disability. Employers may ask about an applicant's ability to perform both essential and marginal job functions. Employer's, though, may not refuse to hire an applicant with a disability because the applicant's disability prevents him or her from performing marginal functions. See Senate Report at 39; House Labor Report at 72–73; House Judiciary Report at 42–43.

Section 1630.13(b) Examination or Inquiry of Employees

The purpose of this provision is to prevent the administration to employees of medical tests or inquiries that do not serve a legitimate business purpose. For example, if an employee suddenly starts to use increased amounts of sick leave or starts to appear sickly, an employer could not require that employee to be tested for AIDS, HIV infection, or cancer unless the employer can demonstrate that such testing is job-related and consistent with business necessity. See Senate Report at 39; House Labor Report at 75; House Judiciary Report at 44.

This provision does not prohibit employers from making inquiries or requiring medical examinations (fitness for duty exams) when there is a need to determine whether an employee is still able to perform the essential functions of his or her job. Nor does this provision prohibit periodic physicals to determine fitness for duty if such physicals are required by medical standards or requirements established by Federal, state, or local law that are consistent with the ADA (or in the case of a federal standard, with section 504 of the Rehabilitation Act) in that they are job-related and consistent with business necessity. Such standards may include federal safety regulations that regulate bus and truck driver qualifications, as well as laws establishing medical requirements for pilots or other air transportation personnel. These standards also include health standards promulgated pursuant to the Occupational Safety and Health Act of 1970, the Federal Coal Mine Health and Safety Act of 1969, or other similar statutes that require that employees exposed to certain toxic and hazardous substances be medically monitored at specific intervals. See House Labor Report at 74–75.

Section 1630.14 Medical Examinations and Inquiries Specifically Permitted

Section 1630.14(a) Pre-employment Inquiry

Employers are permitted to make pre-employment inquiries into the ability of an applicant to perform job-related functions. This inquiry must be narrowly tailored. The employer may describe or demonstrate that job function and inquire whether or not the applicant can perform that function with or without accommodation.

For example, an employer may explain that the job requires assembling small parts and ask if the individual will be able to perform that function. See Senate Report at 39; House Labor Report at 73; House Judiciary Report at 43.

On the other hand, however, an employer may not use an application form that lists a number of potentially disabling impairments and ask the applicant to check any of the impairments he or she may have. Nor may an employer ask how a particular individual became disabled or the prognosis of the individual's disability. The employer is also prohibited from asking how often the individual will require leave for treatment or use leave as a result of incapacitation because of the disability. However, the employer may state the attendance requirements of the job and inquire whether the applicant can meet them.

Section 1630.14(b) Employment Entrance Examination

An employer is permitted to require post-offer medical examinations before the employee actually starts working. The employer may condition the offer of employment on the results of the examination, provided that all entering employees in the same job category are subjected to such an examination, regardless of disability, and that the confidentiality requirements specified in the regulations are met.

This provision recognizes that in many industries, such as air transportation or construction, applicants for certain positions are chosen on the basis of many factors including relevant physical and psychological criteria, some of which may be identified as a result of post-offer medical examinations given prior to entry on duty. Only those employees who meet the employer's relevant physical and psychological criteria for the job will be qualified to receive confirmed offers of employment and begin working.

Medical examinations permitted by this section are not required to be job-related and consistent with business necessity. However, if an employer withdraws an offer of employment because the medical examination reveals that the employee does not satisfy certain employment criteria, either the exclusionary criteria must not screen out or tend to screen out an individual with disabilities or a class of individuals with disabilities, or they must be job-related and consistent with business necessity. As part of the showing that an exclusionary criteria is job-related and consistent with business necessity, the employer must also demonstrate that there is no reasonable accommodation that will enable the individual with a disability to perform the essential functions of the job. See Conference Report at 59–60; Senate Report at 39; House Labor Report at 73–74; House Judiciary Report at 43.

As an example, suppose an employer makes a conditional offer of employment to an applicant, and it is an essential function of the job that the incumbent be available to work every day for the next three months. An employment entrance examination then reveals that the applicant has a disabling impairment that, according to reasonable medical judgment that relies on the most current medical knowledge, will require treatment that will render the applicant unable to work for a portion of the three month period. Under these circumstances, the employer would be able to withdraw the employment offer without violating these regulations.

The information obtained in the course of a permitted entrance examination is to be treated as a confidential medical record and may only be used for the limited purposes specified in the regulation at § 1630.14(b) (2) and (3).

Section 1630.14(c) Other Acceptable Examinations and Inquiries

The regulations permit voluntary medical examinations, including voluntary medical histories, as part of the employee health programs. These programs often include, for example, medical screening for high blood pressure, weight control counseling, and cancer detection. Voluntary activities, such as blood pressure monitoring and the administering of prescription drugs, such as insulin, are also permitted. It should be noted, however, that the medical records developed in the course of such activities must be maintained in the confidential manner required by this regulation and must not be used for any purpose in violation of these regulations, such as limiting health insurance

eligibility. House Labor Report at 75; House Judiciary Report at 43–44.

Section 1630.15 Defenses

The section on defenses in the regulation is not intended to be exhaustive. However, it is intended to inform employers of some of the potential defenses available to a charge of discrimination under the ADA.

Section 1630.15(a) Disparate Treatment Defenses

The "traditional" defense to a charge of disparate treatment under Title VII, as expressed in *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792 (1973), *Texas Department of Community Affairs* v. *Burdine*, 450 U.S. 248 (1981), and their progeny, is applicable to charges of disparate treatment brought under the ADA. See *Prewitt* v. *U.S. Postal Service*, 662 F.2d 292 (5th Cir. 1981). Disparate treatment means, with respect to Title I of the ADA, that an individual was treated differently on the basis of his or her disability. For example, disparate treatment has occurred where an employer excludes an employee with a severe facial disfigurement from staff meetings because the employer does not like to look at the employee. The individual is being treated differently because of the employer's attitude towards his or her perceived disability.

Disparate treatment has also occurred where an employer has a policy of not hiring individuals with AIDS regardless of the individuals' qualifications. The crux of the defense to this type of charge is that the individual was treated differently not because of his or her disability but for a legitimate nondiscriminatory reason such as poor performance unrelated to the individual's disability. The defense is rebutted if the alleged legitimate nondiscriminatory reason is shown to be pretextual.

Section 1630.15 (b) and (c) Disparate Impact Defenses

Disparate impact means, with respect to title I of the ADA, that uniformly applied criteria have an adverse impact on an individual with a disability or a disproportionately negative impact on a class of individuals with disabilities. Section 1630.15(b) clarifies that an employer may use selection criteria that have such a disparate impact, *i.e.*, that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities only when they are job related and consistent with business necessity.

For example, an employer interviews two candidates for a position, one of whom is blind. Both are equally qualified. The employer decides that while it is not essential to the job it would be convenient to have an employee who has a driver's license and so could occasionally be asked to run errands by car. The employer hires the individual who is sighted because this individual has a driver's license. This is an example of a uniformly applied criterion, having a driver's permit, that screens out an individual who has a disability that makes it impossible to obtain a driver's permit. The employer would, thus, have to show that this criterion is job-related and consistent with business necessity. See House Labor Report at 55.

However, even if the criterion is job-related and consistent with business necessity, an employer could not exclude an individual with a disability if there is a less discriminatory alternative criterion that meets the legitimate needs of the business, or if the criterion could be met or job performance accomplished with a reasonable accommodation. For example, suppose an employer requires as part of its application process an interview that is job-related and consistent with business necessity. The employer would not be able to refuse to hire a hearing impaired applicant because he or she could not be interviewed. This is so because an interpreter could be provided as a reasonable accommodation that would allow the individual to be interviewed, and thus satisfy the selection criterion.

Section 1630.15(c) clarifies that there may be uniformly applied standards, criteria and policies not relating to selection that may also screen out or tend to screen out an individual with a disability or a class of individuals with disabilities. Like selection criteria that have a disparate impact, non-selection criteria having such an impact may also have to be job-related and consistent with business necessity, subject to consideration of reasonable accommodation.

It should be noted, however, that some uniformly applied employment policies or practices, such as leave policies, are not subject to challenge under the adverse impact theory. "No-leave" policies (*e.g.*, no leave during the first six months of employment) are likewise not subject to challenge under the adverse impact theory. However, an employer, in spite of its "no-leave" policy, may, in appropriate circumstances, have to consider the provision of leave to an employee with a disability as a reasonable accommodation, unless the provision of leave would impose an undue hardship. See discussion at § 1630.5 Limiting, Segregating and Classifying, and § 1630.10 Qualification Standards, Tests, and Other Selection Criteria.

Section 1630.15(d) Defense to Not Making Reasonable Accommodation

An employer or other covered entity alleged to have discriminated because it did not make reasonable accommodation, as required by this regulation, may offer as a defense that it would have been an undue hardship to make the required accommodation.

It should be noted, however, that an employer cannot simply assert that a needed accommodation will cause it undue hardship, as defined in § 1630.2(p), and thereupon be relieved of the duty to provide accommodation. Rather, an employer will have to present evidence and demonstrate that the accommodation will, in fact, cause it undue hardship. Whether a particular accommodation will impose an undue hardship for a particular employer is determined on a case-by-case basis. Consequently, an accommodation that poses an undue hardship for one employer at a particular time may not pose an undue hardship for another employer, or even for the same employer at another time. See House Judiciary Report at 42.

The concept of undue hardship that has evolved under section 504 of the Rehabilitation Act and is embodied in these regulations is unlike the "undue hardship" defense associated with the provision of religious accommodation under title VII of the Civil Rights Act of 1964. To demonstrate undue hardship pursuant to the ADA, an employer must show substantially more difficulty or expense than would be needed to satisfy the "de minimis" title VII standard of undue hardship. For example, to demonstrate that the cost of an accommodation poses an undue hardship, an employer would have to show that the cost is undue as compared to the employer's budget. Simply comparing the cost of the accommodation to the salary of the individual with a disability in need of the accommodation will not suffice. Moreover, even if it is determined that the cost of an accommodation would unduly burden an employer, the employer cannot avoid making the accommodation if the individual with a disability can arrange to cover that portion of the cost that rises to the undue hardship level, or can otherwise arrange to provide the accommodation. Under such circumstances, the necessary accommodation would no longer pose an undue hardship. See Senate Report at 36; House Labor Report at 68–69; House Judiciary Report at 40–41.

Excessive cost is only one of several possible bases upon which an employer might be able to demonstrate undue hardship. Alternatively, for example, an employer could demonstrate that the provision of a particular accommodation would be unduly disruptive to its other employees or to the functioning of its business. Accordingly, by way of illustration, an employer would likely be able to show undue hardship if the employer could show that the requested accommodation of the upward adjustment of the business' thermostat would result in it becoming unduly hot for its other employees, or for its patrons or customers. The employer would thus not have to provide this accommodation. However, if there were an alternate accommodation that would not result in undue hardship, the employer would have to provide that accommodation. It should be noted, moreover, that the employer would not be able to show undue hardship if the disruption to its employees was the result of those employees' fears or prejudices toward the individual's disability and not the result of the provision of the accommodation.

Section 1630.15(e) Defense—Conflicting Federal Laws and Regulations

There are several Federal laws and regulations that address medical standards and safety requirements. If the alleged discriminatory action was taken in compliance with another Federal law or regulation, the employer may offer its obligation to comply with the conflicting standard as a defense. The employer's defense of a conflicting Federal requirement or regulation may be rebutted by a showing of pretext, or by showing that the Federal standard did not require the discriminatory action, or that there was a less discriminatory means to comply with the statute that would not conflict with these regulations. See House Labor Report at 74.

Section 1630.16 Specific Activities Permitted

Section 1630.16(a) Religious Entities

Religious organizations are not exempt from Title I of the ADA. A religious corporation, association, educational institution, or society may give a preference in employment to individuals of the particular religion, and may require that applicants and employees conform to the religious tenets of the organization. However, a religious organization may not discriminate against an individual who satisfies the permitted religious criteria because that individual is disabled. The religious entity, in other words, is required to consider qualified individuals with disabilities who satisfy the permitted religious criteria on an equal basis with qualified individuals without disabilities who similarly satisfy the religious criteria. See Senate Report at 42; House Labor Report at 76–77; House Judiciary Report at 46.

Section 1630.16(b) Regulation of Alcohol and Drugs

This provision permits employers to establish or comply with certain standards regulating the use of drugs and alcohol in the workplace. It also allows employers to hold alcoholics and persons who engage in the illegal use of drugs to the same performance and conduct standards to which it holds other employees. Individuals disabled by alcoholism are otherwise entitled to the same protections accorded other individuals with disabilities under these regulations. As noted above, individuals currently engaging in the illegal use of drugs are not individuals with disabilities for purposes of these regulations when the employer acts on the basis of such use.

Section 1630.16(c) Drug Testing

This provision reflects Title I's neutrality toward drug testing. Drug tests are neither encouraged nor prohibited. The results of drug tests may be used as a basis for disciplinary action. Drug tests are not considered medical examinations for purposes of these regulations. If the results reveal information about an individual's medical condition beyond whether the individual is currently engaging in the illegal use of drugs, this additional information is to be treated as a confidential medical record. For example, if a test for the illegal use of drugs reveals the presence of a controlled substance that has been lawfully prescribed for a particular medical condition, this information is to be treated as a confidential medical record. See House Labor Report at 79; House Judiciary Report at 47.

Section 1630.16(e) Infectious and Communicable Diseases; Food Handling Jobs

This provision addressing food handling jobs applies the "direct threat" analysis to the particular situation of accommodating individuals with infectious or communicable diseases that are transmitted through the handling of food. The Department of Health and Human Services is to prepare a list of infectious and communicable diseases that are transmitted through the handling of food. If an individual with a disability has one of the listed diseases and works in or applies for a position in food handling, the employer must determine whether there is a reasonable accommodation that will eliminate the risk of transmitting the disease through the handling of food. If there is an accommodation that will not pose an undue hardship, and that will prevent the transmission of the disease through the handling of food, the employer must provide the accommodation to the individual. The employer, under these circumstances, would not be permitted to discriminate against the individual because of the need to provide the reasonable accommodation and would be required to maintain the individual in the food handling job.

If no such reasonable accommodation is possible, the employer may refuse to assign, or to continue to assign the individual to a position involving food handling. This means that if such an individual is an applicant for a food handling position the employer is not required to hire the individual. However, if the individual is a current employee, the employer would be required to consider the accommodation of reassignment to a vacant position not involving food handling for which the individual is qualified. Conference Report at 61–63. (See § 1630.2(r) Direct Threat).

Section 1630.16(f) Health Insurance, Life Insurance, and Other Benefit Plans

This provision is a limited exemption that is only applicable to those who establish, sponsor, observe or administer benefit plans, such as health and life insurance plans. It does not apply to those who establish, sponsor, observe or administer plans not involving benefits, such as liability insurance plans.

The purpose of this provision is to permit the development and administration of benefit plans in accordance with accepted principles of risk assessment. This provision is not intended to disrupt the current regulatory structure for self-insured employers. These employers may establish, sponsor, observe, or administer the terms of a bona fide benefit plan not subject to state laws that regulate insurance. This provision is also not intended to disrupt the current nature of insurance underwriting, or current insurance industry practices in sales, underwriting, pricing, administrative and other services, claims and similar insurance related activities based on classification of risks as regulated by the States.

The activities permitted by this provision do not violate these regulations even if they result in limitations on individuals with disabilities, provided that these activities are not used as a subterfuge to evade the purposes of these regulations. Whether or not these activities are being used as a subterfuge is to be determined without regard to the date the insurance plan or employee benefit plan was adopted.

However, an employer or other covered entity cannot deny a qualified individual with a disability equal access to insurance or subject a qualified individual with a disability to different terms or conditions of insurance based on disability alone, if the disability does not pose increased risks. This regulation requires that decisions not based on risk classification be made in conformity with non-discrimination requirements. See Senate Report at 84–86; House Labor Report at 136–138; House Judiciary Report at 70–71. See the discussion of § 1630.5 Limiting, Segregating and Classifying.

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Thursday
February 28, 1991

Part VII

Department of Housing and Urban Development

Office of the Secretary

Lead-Based Paint Guidelines for Public and Indian Housing; Request for Comments; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-91-3196; FR-2814-N-01]

Lead-Based Paint Guidelines (Public and Indian Housing); Request for Comments on Content of Lead-Based Paint Guidelines and for Comments Regarding General Applicability of Guidelines for HUD and Other Federal Programs

AGENCY: HUD, Office of the Secretary.

ACTION: Notice.

SUMMARY: On April 18, 1990, HUD published in the Federal Register (55 FR 14555) Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing, effective April 1, 1990, which provide information on appropriate methods of identifying and abating lead-based paint (LBP) in the Department's Public and Indian Housing Programs. At 55 FR 39874, on September 28, 1990, a substitute chapter 8 of the Guidelines was published. The April 18, 1990, publication as revised is hereafter referred to as Guidelines. The Guidelines are intended to assist Public Housing Agencies and Indian Housing Authorities in carrying out their LBP responsibilities under the Lead-Based Paint Poisoning Prevention Act (LPPPA), 42 U.S.C. 4821 *et seq.*

This notice solicits comments from the public regarding the testing and abatement methods set forth in the Guidelines. This notice also requests advice from the public regarding the potential use of the Guidelines for other HUD housing programs (such as section 8 Housing, Community Development Block Grants, and the Rental Rehabilitation program, programs of the Federal Housing Administration (FHA)), other federally-owned housing, and as to privately-owned single and multifamily housing in the United States.

DATES: Comment Due Date is April 29, 1991.

ADDRESSES: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication will be available for public inspection and copying from 7:30 a.m. to 5:30 p.m. on regular business days at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile [FAX] machine. The telephone number of the FAX receiver is (202) 708–4337. (This is not a toll-free telephone number.) Only comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk on voice, ((202) 708–2084; or TDD (202) 708–3259).

FOR FURTHER INFORMATION CONTACT: Ronald J. Morony, Director, Division of Innovative Technology, Office of Research, (202) 708–0640, room 8136, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: The Lead-Based Paint Poisoning Prevention Act (LPPPA) requires the Department of Housing and Urban Development to "establish procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to any existing housing which may present such hazards and which is covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary." HUD issued three regulations in response to judicial direction in *Ashton* v. *Pierce,* 541 F. Supp. 635 (D.D.C. 1982), *aff'd,* 716 F. 2d 56 (D.C. Cir. 1983) on August 1, 1986 (Public Housing), January 15, 1987 (FHA and section 8), and February 17, 1987 (CPD). (51 FR 27774, 52 FR 1876, and 52 FR 4870).

On June 6, 1988 (53 FR 20790), as part of its final rule implementing amendments to the LPPPA contained in the Housing and Community Development Act of 1987, HUD announced in the preamble that updated testing and abatement guidance would be published in the Federal Register. HUD also stated that further regulatory action would be needed to extend Section 566 of the HCD Act of 1987 to other HUD programs, after completion of a demonstration project. Shortly thereafter, the Secretary was instructed with regard to Public and Indian housing in the HUD-Independent Agencies Appropriations Act, 1989, Public Law 100–404, August 19, 1988, to spend no appropriated funds "with respect to the testing and abatement of lead-based paint in public housing until the Secretary develops comprehensive technical guidelines on reliable testing protocols, safe and effective abatement techniques, clean-up methods, and acceptable post-abatement lead dust levels." In the HUD-Independent Agencies Appropriations Act, 1990, Public Law 101–144, November 9, 1989, HUD was further instructed to issue lead-based paint testing and abatement guidelines no later than April 1, 1990.

The Guidelines published in the Federal Register as part II (55 FR 14555, as amended at 55 FR 39874) represent the first national compilation of technical protocols, practices, and procedures on testing, abatement, worker protection, clean-up and disposal of lead-based paint in residential structures. They were designed to be used in conjunction with State or local codes or regulations pertaining to lead-based paint by Public Housing Agencies and Indian Housing Authorities. When it issued the Guidelines, HUD satisfied the requirement which limited the expenditure of funds created by language in the above-cited 1989 and 1990 HUD-Independent Agencies Appropriations Acts. HUD will use its experience with these Guidelines, as well as comments received in response to this Notice, as it prepares revised rules for HUD and other federal programs. HUD anticipates that these Guidelines will be periodically amended as necessary to reflect the evolving state of technology in the testing and abatement of lead-based paint.

While HUD has performed statutorily required consultations and been advised by distinguished consultants and other public and private experts in creating the Guidelines, HUD recognizes that lead-based paint testing and abatement are highly complex and evolving technological areas, and that other public and private researchers and public and private agencies may possess useful expert knowledge. Accordingly, HUD is seeking comments from interested persons and organizations regarding the content and practicability of these Guidelines. The initial applicability of these Guidelines is to Public Housing Agencies and Indian Housing Authorities to improve the physical condition of existing public housing developments. The cost of such testing and abatement will be largely funded by HUD. Most of the programs of HUD are not so funded; therefore, HUD also requests comments regarding the practicability and affordability of using the subject Guidelines in any other HUD program.

HUD must establish procedures for all federally-owned properties whose proposed use is for residential habitation. Therefore, comments addressed to the practicability and affordability of these guidelines in relation to testing and abatement of lead-based paint in federally-owned housing are also encouraged. LPPPA

also provides that the Secretary of HUD is to "establish and implement procedures to eliminate the hazards of lead-based paint poisoning in all federally-owned properties prior to the sale of such properties when their use is intended for residential habitation." Federally owned properties would include properties to be sold by VA, FmHA, FHA, GSA, the Department of Defense, Coast Guard, National Park Service and the Resolution Trust Corporation for residential use, and the expansion of the use of these guidelines would have a potentially significant impact on the sale activities of other Federal agencies (24 CFR part 35, subpart E sets forth the current requirements). The Department is seeking the advice as contemplated by LPPPA at 42 U.S.C. 4842, of agencies which it believes have federally-owned properties, but may not be aware of all property-disposing federal agencies or entities. Thus, identification of such entities, as well as comments are requested.

Finally, HUD is charged under 42 U.S.C. 4822(d)(4) to prepare and transmit to Congress a comprehensive and workable plan based on the testing and abatement demonstration authorized by 42 U.S.C. 4822(d)(2) with recommendations leading to the "prompt and cost-effective inspection and abatement of privately owned single family and multifamily housing . . ." A report, entitled "Comprehensive and Workable Plan for the Abatement of Lead-Based Paint in Privately Owned Housing" was transmitted to Congress on December 7, 1990. The Department also requests comments regarding the Guidelines in relation to their use in private housing, as well as comments regarding HUD's charge to make recommendations for changes in the legislation.

The Guidelines may be read in the above-cited editions of the **Federal Register.** In addition, a copy may be obtained by writing HUD USER, P.O. Box 6091, Rockville, MD 20850 or calling 1–800–245–2691 or 301–251–5154 in Maryland and the DC metropolitan area. A charge will be made for this service.

Dated: February 19, 1991.

Jack Kemp,

Secretary.

[FR Doc. 91–4697 Filed 2–27–91; 8:45 am]

BILLING CODE 4210–32–M

federal register

Thursday
February 28, 1991

Part VIII

Department of Education

Chapter 1 Migrant Education Coordination Program for State Educational Agencies; Notices

DEPARTMENT OF EDUCATION

Chapter 1 Migrant Education Coordination Program for State Educational Agencies

AGENCY: Department of Education.

ACTION: Notice of final funding priorities for fiscal years (FY) 1991 and 1992.

SUMMARY: The Secretary of Education establishes absolute priorities for fiscal years 1991 and 1992 grant competitions under the Chapter 1—Migrant Education Coordination Program for State Educational Agencies. Under the priorities, and as mandated by statute, funds would be reserved first for a project that addresses a national system for credit exchange and accrual. Remaining funds would be reserved for projects in the seven additional priorities, developed in consultation with the States, that are designed to improve the interstate and intrastate coordination among State and local educational agencies of the educational programs available for migratory students. The number of projects funded, and the number of priority areas in which there will be projects, will depend on the availability of funds.

EFFECTIVE DATES: These priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. Francis V. Corrigan, Office of Elementary and Secondary Education, U.S. Department of Education, room 2145, 400 Maryland Avenue, SW., Washington, DC 20202–6135. Telephone (202) 401–0740. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: Authority for the Chapter 1—Migrant Education Coordination Program for State Educational Agencies is contained in section 1203 of the Elementary and Secondary Education Act of 1965. Under this program, awards are made to State educational agencies (SEAs) to improve the inter- and intrastate coordination of the educational programs available for migratory students. The statute directs the Secretary to make awards to SEAs in consultation with, and with the approval of, the States. The statute also directs the Secretary to support a national system for credit exchange and accrual.

On October 1, 1990, the Secretary published a notice of proposed funding priorities for this competition in the **Federal Register** (55 FR 40004). In response to the notice, three parties submitted comments. One concurred with the Secretary's rankings and suggested minor language changes; two others suggested changes to the rank ordering. No additional priorities were suggested. The Secretary has considered the results of a survey of State directors conducted by the Office of Migrant Education (OME) and described in the October 1 notice, the input of State directors at professional meetings and conferences of migrant educators, and the comments received in response to the October 1 notice in announcing these final funding priorities for fiscal years 1991 and 1992.

Analysis of Comments and Changes

Comment: One commenter agreed with the ranking of the priority areas suggested by the Secretary, but recommended clarifying changes in the wording of proposed Priority 2, Establishing a Migrant Stop-Over Service Center. The commenter suggested that (1) the priority clarify that stop-over site project services be provided to those who migrate to locations in the State of the stop-over site as well as in other States; (2) the project inform the children, as well as their parents or guardians, of services available near locations to which they are migrating; (3) the project be responsible for informing only State-level program officials in those locations rather than the local personnel, of the children's expected arrival; and (4) the project be responsible for establishing linkages with other appropriate programs that benefit migrant children and that are located near the project site, such as those offered by the Department of Labor, Head Start, or health care agencies.

Discussion: The Secretary agrees that the commenter's suggestions would clarify the desired activities to be conducted under this priority. However, the Secretary believes that, in some cases, notification of State-level personnel alone about the expected arrival of students may be inadequate, and so has determined that this notification should be made to State- or local-level personnel, as appropriate.

Changes: Priority 2 has been changed accordingly.

Comment: Two commenters suggested that the priority ranking be changed. One of these commenters suggested that the fifth proposed priority, NASDME Analysis and Support, be moved up to the second position, directly behind Credit Exchange and Accrual. The commenter felt that these two priorities, as well as certain functions of the Stop-Over Site project, are the only ones that truly address interstate coordination. The commenter stated that the proposed priorities for Preschool Services, Parental Involvement, and Dropout Prevention do not directly address inter- and intrastate coordination. The second commenter, by contrast, felt that the proposed priorities for Parental Involvement, Summer School Programs, and Preschool Services would address the greatest needs and should be moved to the top of the priority ranking. The second commenter also recommended that projects with experienced personnel in these areas be given preference in funding competition, and additional credit be given for projects or material already under development in these areas, to reduce waste and overlap.

Discussion: The priority to establish a national project for a system of credit exchange and accrual is required by statute and therefore must be ranked first.

The Secretary continues to believe that the second priority, the establishment of a stop-over migrant service center, warrants a higher ranking than the remaining priorities, because of the significant recruitment and coordination services that can be provided annually to a large number of migrant children and their families who pass through a particular State enroute to locations elsewhere. As noted in the discussion of public comment in the October 23, 1989, final regulations for the Chapter 1 Migrant Education Program (54 FR 43238), the Secretary believes that Section 1203 funds are a particularly good source of support for this type of project since the children passing through a stopover site will likely remain in the State for too short a period to generate adequate funding for the project out of the State's section 1201 allocation.

With regard to the third priority, early childhood education has been identified by the President and the Governors as a high priority area in the national goals for education, which declare that by the year 2000, every American child will enter school ready to learn. In addition, most State directors responding to the OME survey indicated that there is a pressing need to provide technical assistance and share preschool education program expertise within and among States. Finally, with the new emphasis on preschool education in a number of Department programs, the

Secretary recognizes the great need of State projects to receive coordination support for early childhood education through section 1203 funds. The Secretary therefore believes the Preschool Services Priority should remain third.

The Secretary also regards Priority 4, Parental Involvement, as a higher priority than Priority 5, NASDME Analysis and Support. The Secretary seeks to strengthen parental involvement, emphasizing parents' responsibility to be teachers of their children and advocates for their children's education. Moreover, the majority of survey respondents ranked Parental Involvement as a higher priority than NASDME Analysis and Support.

Addressing the other concern of the first commenter, the Secretary is convinced that the Preschool Services, Parental Involvement, and Dropout Prevention priorities do directly address inter-and intrastate coordination, because they would require two or more States to work together in conducting activities to improve coordination among State and local education agencies in those areas.

However, the Secretary does not agree with the second commenter that Parental Involvement, Summer School Programs, and Preschool Services should be moved to the top of the priority ranking. The rationale supporting the placement of Preschool Services and Parental Involvement in the priority ranking is discussed above. The Secretary also believes that the ranking of Summer School Services should remain unchanged. State directors responding to the OME survey did not identify summer school as a higher priority area than the other priorities to receive coordination support through section 1203 funds.

The Secretary takes note of the second commenter's concerns about prior experience and duplication of effort; however, these concerns go beyond the scope of both this announcement and the application selection criteria contained in 34 CFR 205.31.

The Secretary believes that the ordering of the remaining final priorities best meets the coordination needs of the Migrant Education Program and is consistent with the expressed needs and concerns of the States.

Changes: None.

Absolute Priorities

In accordance with the Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.105(c)(3), the Secretary establishes the following absolute priorities under the Migrant Education Coordination Program for State Educational Agencies. The publication of these absolute priorities does not bind the Department of Education to fund projects in these areas, except as otherwise directed by statute. Moreover, the publication of these priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements. Projects may be funded by grant, cooperative agreement, or contract. One or more of these priorities may be addressed by continuing to fund existing projects for additional years, or by funding wholly new projects.

The Secretary publishes an application notice elsewhere in this issue of the **Federal Register** announcing the expected availability of funds for these priorities in fiscal year 1991, and the priority areas for which funds will be awarded.

A directory of absolute priorities is listed first for convenience of review, with discussion of each priority further in this notice.

Priority 1. Establishing a National Project for a System of Credit Exchange and Accrual.

Priority 2. Establishing a Migrant Stop-Over Site Service Center.

Priority 3. Improving the Coordination and Delivery of Preschool Services to Migratory Children.

Priority 4. Improving Coordination of Educational Opportunities for Migratory Children Through Parental Involvement.

Priority 5. National Association of State Directors of Migrant Education (NASDME) Analysis and Support.

Priority 6. Improving Coordination of Interstate and Intrastate Identification and Recruitment of Currently Migratory Children.

Priority 7. Dropout Prevention for Migrant Students.

Priority 8. Improving Coordination of Educational Programs and Opportunities for Migratory Children in Summer Programs.

Priority 1. Establishing a National Project for a System of Credit Exchange and Accrual.

Under this priority, as required by statute, the Secretary funds a project to develop and establish a national program of credit exchange and accrual to help currently migratory students meet high school graduation requirements and receive their high school diplomas.

The project would build upon the existing Migrant Student Record Transfer System (MSRTS). MSRTS tracks credits earned by students towards their current school district's graduation requirements, but is not a vehicle for ensuring that credits earned in one jurisdiction will count towards graduation requirements in another State or locality. The grantee would work with SEAs to develop a system whereby credits earned by migrant students could be uniformly acknowledged, transferred, and counted towards graduation requirements among the various States and school districts. The project would take into account the varying SEA and local educational agency regulations and policies concerning credit accrual, credit transfer, and graduation requirements.

The project would also utilize findings from recent studies on secondary education for migratory students, such as the Secondary Dropout Prevention Program and ED's Handbook of Effective Migrant Education Practices.

Priority 2. Establishing a Migrant Stop-Over Site Service Center

Under this priority, the Secretary funds a project that would provide educational, health, recreation, and other services at a stop-over site used by migrant children and their families who are migrating to work at locations in the State of the stop-over site or in other States. Through recruitment efforts at the site, the project would identify migratory children and inform them, as well as their parents or guardians, of educational services available near the locations to which they are planning to travel, and inform State or local migrant officials in these destinations of the expected arrival of the children. The project would also be responsible for establishing linkages to appropriate nearby agencies such as Department of Labor, Head Start, health care and others that benefit migrant children. The project's location must enable it to serve large numbers of migrant children and their families annually through cooperative efforts of various Federal, State and local agencies, and its staff must possess adequate expertise and experience to set up quick education linkages in many States.

Priority 3. Improving the Coordination and Delivery of Preschool Services to Migratory Children

Under this priority, the Secretary awards a grant to one or more SEAs to establish one or more local demonstration projects that implement innovative methods to improve the coordination and operation of preschool services across school district or State boundaries or both. The innovative

practices for coordinating boundaries or both. The innovative methods for coordinating and serving migrant preschool children, especially currently migratory preschool children, would be designed by the grantee and put into practice as local demonstration projects based on a review of current research on preschool education, including current ED studies of preschool education and ED's Handbook of Effective Migrant Education Practices.

After implementing innovative practices through the local demonstration projects, the grantee would identify the particular innovative techniques employed at the demonstration sites, as well as the effectiveness, costs, and cost-effectiveness of these techniques. In addition, as a subsidiary focus, the grantee would develop and disseminate appropriate training materials and conduct, in cooperation with ED, a limited number of training workshops to assist other SEA and local educational agency (LEA) personnel in coordinating and operating preschool services for migrant children.

Priority 4. Improving Coordination of Educational Opportunities for Migratory Children Through Parental Involvement

Under this priority, the Secretary awards a grant to one or more SEAs to establish one or more local demonstration projects that implement innovative methods to coordinate and conduct—across State or school district boundaries—parental involvement activities for migrant children. The innovative methods for coordinated parent involvement activities would be designed by the grantee and put into practice as local demonstration projects. The design would be based on a review of current research and practices related to parent involvement, including ED's Handbook of Effective Migrant Education Practices.

After implementing innovative practices through local demonstrations, the grantee would identify the particular innovative techniques that were employed at the demonstration sites, as well as the effectiveness, costs, and cost-effectiveness of these techniques. As a subsidiary focus, the grantee would develop and disseminate appropriate training materials. The grantee would conduct, in cooperation with ED, a limited number of training workshops to assist other SEA and LEA personnel in coordinating and conducting activities for the parents of migrant children.

Priority 5. National Association of State Directors of Migrant Education (NASDME) Analysis and Support

Under this priority, the Secretary supports a project for State Directors of Migrant Education that would (1) improve their ability to coordinate programs and projects among the States and (2) improve the quality of those programs and projects. The project would enhance the State directors' collective efforts to provide analysis, program implementation, management and improvement activities; conduct special committee meetings on program requirements or initiatives common to all SEAs such as evaluation, MSRTS, credit accrual, or quality control; engage in special coordination endeavors within the migrant education program and with other Federally funded programs; and ensure dissemination and specific collaborative efforts among Federal, State and local staff pertaining to migratory students and their families. Additional activities to enhance interstate coordination would include attention to technological applications, comprehensive data reporting requirements, policy development, and technical assistance. To support this operation, the funded SEA would receive financial support to maintain a small NASDME support staff to assist State directors in performing the above-mentioned coordination activities. The NASDME staff would also assemble, maintain and disseminate information on exemplary program practices, and work in conjunction with MSRTS to provide a data bank on exemplary programs. Funds would also be made available to help State directors defray the costs of attending NASDME national and subcommittee meetings and other related professional activities.

Priority 6. Improving Coordination of Interstate and Intrastate Identification and Recruitment of Currently Migratory Children

Under this priority, the Secretary funds a project that would build upon previous identification and recruitment (I&R) studies, MSRTS data, and ongoing practices in I&R. The project would be designed for the purpose of more rapidly identifying migrant families as they move from school district to school district. Presently, States and their operating agencies use different types of notification systems to inform potential receiving school districts that new migrant families will either be arriving or that they may have already arrived in the receiving school districts. Identifying and assessing the different notification systems used would be the major task of this project. Following assessment of the systems, recommendations would be made to the SEAs and the Secretary concerning which systems work best and which are the ones most easily replicated. Criteria to assess the efficacy of the notification systems would include: (a) Frequency and accuracy of identification and recruitment of previously unidentified currently interstate migratory children in the receiving State; and (b) The number of currently migratory children that each notification system identifies for enrollment in two or more school districts during a 12-month period.

Priority 7. Dropout Prevention for Migrant Students

Under this priority, the Secretary funds a local demonstration project to help two or more States adopt and institutionalize model programs for jointly assisting high-risk currently migratory students who are potential or actual dropouts from secondary school and who would benefit from special services in those States. The project would utilize a variety of research and operational projects such as the Migrant Education Secondary Assistance project (MESA), the Interstate Migrant Secondary Team Project, Migrant Dropout Model, ED's Handbook of Effective Migrant Education Practices, and the Migrant Attrition Project (MAP) to develop a strategy for improving retention rates and recruiting dropouts back into the classroom.

The project would provide information and practical approaches to State directors and specialists on identifying potential dropouts, preventing dropout, reducing attrition rates, and expanding migrant education services to dropouts (including alternative schooling programs such as work-study projects). As a subsidiary focus, the project would develop and disseminate appropriate training materials and conduct a limited number of training workshops for SEA personnel to assist them in addressing the dropout problem within and among States.

Priority 8. Improving Coordination of Educational Programs and Opportunities for Migratory Children in Summer Programs

Under this priority, the Secretary funds a project to identify issues related to coordinating migrant education summer programs with regular school programs and improve communications between sending and receiving States in which migratory children enroll in summer programs. The project would: (1) Examine the varieties of summer

migrant programs in terms of their duration, costs, intensity, and methods of instruction; (2) Analyze the short- and long-term effects selected summer migrant education programs have upon continued schooling and graduation from high school; (3) Organize workshops to develop training materials to facilitate improved coordination among SEAs and LEAs serving the same children in receiving and sending schools; and (4) Analyze the additional costs of serving migratory children in various types of summer programs compared to costs of serving those children in regular school programs.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Program Authority: 20 U.S.C. 2783.

(Catalog of Federal Domestic Assistance Number 84.144, Chapter 1—Migrant Education Coordination Program for State Educational Agencies)

Dated: February 21, 1991.

Ted Sanders,

Acting Secretary of Education.

[FR Doc. 91–4693 Filed 2–27–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

[CFDA No: 84.144A–2]

Chapter 1 Migrant Education Coordination Program for State Educational Agencies Inviting Applications for New Awards for Fiscal Year (FY) 1991

Purpose of Program: To award grants to State educational agencies to improve interstate and intrastate coordination of migrant education programs and projects.

Eligible applicants: State educational agencies.

Deadline for transmittal of applications: May 1, 1991.

Deadline for intergovernmental review: July 1, 1991.

Applications available: March 1, 1991.

Available funds: $200,000–$400,000.

Estimated number of awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project period: Up to 3 years.

Applicable regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85 and 86; and (b) The regulations for this program in 34 CFR part 205.

Priority: Under 34 CFR 75.105 and the notice of final priorities for this program, as published elsewhere in this issue of the **Federal Register**, the Secretary will give absolute preference to applications that meet the following priority:

Priority 2. Establishing a Migrant Stop-Over Site Service Center

Under 34 CFR 75.105(c)(3), the Secretary will fund under this competition only applications that meet this absolute priority.

For applications or information contact: Dr. Ann Weinheimer, U.S. Department of Education, 400 Maryland Avenue SW., room 2151, Washington, DC 20202–6135. Telephone (202) 401–0744. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 2783.

Dated: February 21, 1991.

John T. MacDonald,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 91–4693 Filed 2–27–91; 8:45 am]

BILLING CODE 4000–01–M

federal register

Thursday
February 28, 1991

Part IX

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 107, 171, and 173

Amendments to the Hazardous Materials Program Procedures and Regulations; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107, 171, and 173

[Docket No. HM-207; Amdts. 107-24; 171-12; 173-226]

RIN 2137-AC01

Amendments to the Hazardous Materials Program Procedures and Regulations

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: The Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), enacted on November 16, 1990, amended the Hazardous Materials Transportation Act of 1975 (HMTA). RSPA is issuing this final rule to conform its regulations to certain provisions of the HMTUSA amendments.

This rule amends the regulations by increasing the maximum civil penalty that may be assessed for violations of the HMTA and the regulations issued under the HMTA, and by establishing a minimum civil penalty amount. This rule also adds new definitions, establishes standards and procedures for preemption and waiver of preemption determinations, and makes other changes consistent with the HMTUSA.

EFFECTIVE DATE: November 16, 1990.

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Assistant Chief Counsel, or Mary Crouter, Senior Attorney, Hazardous Materials Safety & Research and Technology Law Division, Office of the Chief Counsel, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590, telephone: (202) 366-4400.

SUPPLEMENTARY INFORMATION:

I. Changes Effected by the Hazardous Materials Transportation Uniform Safety Act of 1990

The Hazardous Materials Transportation Uniform Safety Act (HMTUSA; Public Law 101-615) was enacted on November 16, 1990. The HMTUSA amends the Hazardous Materials Transportation Act (HMTA; 49 app. U.S.C. 1801-1813) in many significant respects. The amendments addressed by this final rule include the following:

(1) Section 3 of the HMTUSA adds to or amends the definitions in the HMTA.

(2) Section 4(a) of the HMTUSA establishes a new preemption standard for State, political subdivision, or Indian tribe requirements that concern certain covered subjects.

(3) Section 4(b) of the HMTUSA establishes a new preemption standard for State or Indian tribe designations of highway routes for the transportation of hazardous materials or any limitations or requirements with respect to such routes.

(4) Section 5 of the HMTUSA prohibits unlawful representations concerning compliance with the HMTA and the implementing regulations, or the presence of a hazardous material. It also prohibits unlawful tampering with placards or other markings, or with a package used for transporting hazardous materials.

(5) Section 9 of the HMTUSA removes the requirement that the Secretary publish a notice in the **Federal Register** when an application for renewal of an exemption is received.

(6) Section 10 of the HMTUSA allows the Secretary to determine those radioactive materials which may be moved on passenger-carrying aircraft.

(7) Section 12 of the HMTUSA provides for the assessment of civil penalties for violations of "orders" issued by the Secretary; increases the maximum civil penalty that may be assessed from $10,000 to $25,000, and establishes a minimum civil penalty of $250; defines "acting knowingly" for purposes of assessing civil penalties for violations; and provides criminal penalties for knowingly violating 49 U.S.C. 1804(f) (unlawful tampering) or for willfully violating a provision of the HMTA, or an order or regulation issued under the HMTA.

(8) Section 13 of the HMTUSA codifies the preemption standard for State, political subdivision, or Indian tribe requirements contained in RSPA regulations governing the inconsistency ruling process, 49 CFR 107.201-107.211. This section also states that State, political subdivision, or Indian tribe requirements are preempted pursuant to 49 app. U.S.C. 1804(a)(4) (covered subjects) or 49 app. U.S.C. 1804(b) (highway routing); and provides for administrative preemption and waiver of preemption determination processes and judicial review of those determinations.

(9) Section 20 of the HMTUSA extends application of Federal, state, and local law to persons who, under contract to the Federal government, transport or cause to be transported or shipped, a hazardous material, or manufacture, repair, or test a package or container which is represented as qualified for use in the transportation of hazardous materials.

(10) Section 31 of the HMTUSA provides, with certain exceptions not relevant here, that the HMTUSA, including the amendments made by the HMTUSA, shall take effect on the date of enactment (November 16, 1990). Section 31 also states that any regulation or ruling issued before the date of enactment and any authority granted under such a regulation shall continue in effect according to its terms until repealed, amended, or modified by the Secretary of Transportation or a court of competent jurisdiction.

II. Public Participation

The final rule adopted today mirrors the statutory changes and makes other corresponding editorial and technical changes. Any editorial changes made to other provisions of the regulations have merely been made for consistency and clarity. Therefore, notice and comment procedures are "impracticable, unnecessary, or contrary to the public interest" within the meaning of section 4(b)(3)(B) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B). Any delay necessitated by notice and comment procedures would be contrary to the public interest. For similar reasons, there is good cause for not publishing this rule at least 30 days before its effective date, as is ordinarily required by 5 U.S.C. 553(d). All interested parties have had notice of the relevant provisions of the HMTUSA since its enactment on November 16, 1990. In addition, it is impracticable to have regulations that are contrary to the HMTA as amended by the HMTUSA. Section 31 of the HMTUSA specifically provides that the amendments shall take effect on the date of enactment.

Other provisions of the HMTUSA, however, will require the Department to initiate rulemaking proceedings utilizing notice and comment procedures. Those provisions will be addressed at a later date.

III. Preemption

The HMTUSA made several significant changes to the preemption provisions of the HMTA.

Covered Subjects

Section 4 amended section 105 of the HMTA by adding new subsections (a)(4)(A) and (B) to preempt any requirement of a State, political subdivision thereof, or Indian tribe concerning the following subjects if the non-Federal requirement is not substantively the same as any provision of the HMTA or any Federal regulation issued under the HMTA:

(i) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

49 App. U.S.C. 1804(a)(4) (A) and (B).

In its legislative proposal to reauthorize the HMTA (See, July 11, 1989 letter from Samuel K. Skinner, Secretary of Transportation, to The Honorable Dan Quayle, President of the Senate, hereinafter referred to as the July 11, 1989 Letter), the Department of Transportation delineated these subject areas as "critical areas of hazardous materials transportation regulation" that should be Federally preempted, unless the non-Federal requirements are identical to the Federal requirements.

Congress agreed that these areas are important, and the new preemption standard was added to clarify the "relationship of Federal and non-Federal laws governing the transportation of hazardous materials. In certain areas that are critical to the safe and efficient transportation of hazardous materials, the bill preempts State and local requirements that are different from the HMTA or regulations issued thereunder." H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 21 (1990). Congress stated that the "enforcement of consistent Federal, State, and local laws is the best way to assure the safe transportation of hazardous materials," and that the "subjects listed * * * are critical both to the safe transportation of hazardous materials and to the free flow of commerce." H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 33 (1990).

Congress also stated that "[c]onflicting Federal, State, and local requirements pose potentially serious threats to the safe transportation of hazardous materials. Requiring State and local governments to conform their laws to the HMTA and regulations thereunder, with respect to the specific subjects listed in section 105(a)(4)(B), will enhance the safe and efficient transportation of hazardous materials, while better defining the appropriate roles of Federal, State, and local jurisdictions." H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 34 (1990).

RSPA plans to define the new standard of "substantively the same" in a future rulemaking.

Highway Routing

Section 4 of the HMTUSA also amended section 105 of the HMTA to add a new subsection (b) to provide, with certain exceptions, that after the last day of the 2-year period beginning on the date of the issuance of the Federal standards for highway routing, no State or Indian tribe may establish, maintain, or enforce:

(i) Any highway route designation over which hazardous materials may or may not be transported by motor vehicles, or

(ii) Any limitation or requirement with respect to such routing, unless such designation, limitation, or requirement is made in accordance with the procedural requirements of the Federal standards and complies with the substantive requirements of the Federal standards.

49 App. U.S.C. 1804(b)(4).

RSPA is adding this new preemption standard to its regulations to mirror the statute. The HMTUSA requires Federal standards for States and Indian tribes to use in establishing, maintaining, and enforcing highway routes. These highway routing standards will be the subject of future rulemaking.

Standards for Preemption and Preemption Determination Process

Section 13 of the HMTUSA amends section 112 of the HMTA to provide that any requirement of a State, political subdivision, or Indian tribe is preempted if:

(1) Compliance with both the State or political subdivision or Indian tribe requirement and any requirement of this title or of a regulation issued under this title is not possible,

(2) The State or political subdivision or Indian tribe requirement as applied or enforced creates an obstacle to the accomplishment and execution of this title or the regulations issued under this title, or

(3) It is preempted under section 105(a)(4) or section 105(b) [Discussed above under "Covered Subjects" and "Highway Routing"].

49 App. U.S.C. 1811(a).

Until amended by section 13 of the HMTUSA, section 112 of the HMTA preempted any requirement of a State or political subdivision that was "inconsistent" with any requirement set forth in the HMTA or a regulation issued under the HMTA. The HMTA did not define "inconsistent" or provide any standards for determining what requirements were "inconsistent." By regulation, RSPA set forth two criteria it would consider in determining whether a non-Federal requirement was inconsistent with the HMTA or the regulations:

(1) Whether compliance with both the non-Federal and Federal requirement is possible, and

(2) The extent to which the non-Federal requirement is an obstacle to the accomplishment and execution of the HMTA and the regulations issued thereunder.

49 CFR 107.209(c) (1) and (2).

These two criteria were originally established by Supreme Court decisions determining whether a conflict exists between a State and a Federal statute in areas where Congress has not completely foreclosed State regulation (*Ray* v. *Atlantic Richfield Co.*, 435 U.S. 151 (1978); *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963); *Hines* v. *Davidowitz*, 312 U.S. 52 (1941)). In its proposal to reauthorize the HMTA, the Department of Transportation included these two standards, edited to reflect the proposed change in their use from advisory criteria to statutory preemption standards. July 11, 1989 Letter. In the HMTUSA, Congress adopted these standards proposed by the Department. The "two standards [adopted] are the same requirements that are currently codified in regulations relating to inconsistency rulings." H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 49 (1990). Congress stated its intention to clarify the current preemption process "by more clearly identifying the standards against which a determination of preemption is made.

Those standards are now reflected in Court decisions and they are documented in the precedents established in administrative rulings issued by the Department." H.R. Rep. No. 444, Pt. 2, 101st Cong., 2d Sess. 25 (1990).

The previous criteria were considerations used by RSPA in making advisory inconsistency rulings, while the new statutory standards are to be used by RSPA (and the courts) in making legally binding preemption determinations. Thus, the first standard sets forth an affirmative statement of preemption if compliance with both the Federal and non-Federal requirements is not possible. The second standard sets forth an affirmative statement of preemption if the non-Federal requirement as applied or enforced creates an obstacle to the accomplishment and execution of the HMTA or the regulations thereunder. The third standard sets forth an affirmative statement of preemption if the non-Federal requirement is

preempted under amended sections 105(a)(4) or 105(b).

The first standard against which a non-Federal requirement may be compared is whether it is "possible" to comply with both the Federal and non-Federal requirements at the same time. Where "dual compliance" is not possible, then the non-Federal requirement will be preempted.

The second standard pertains to those non-Federal requirements that, "as applied or enforced," create an obstacle to the accomplishment and execution of the HMTA and regulations thereunder. This standard reflects RSPA's prior experience in issuing inconsistency rulings. Under the previous inconsistency ruling process, most of the rulings were issued without any knowledge on the part of RSPA as to whether there had been any enforcement of the non-Federal requirement. RSPA did not require an applicant to show that a non-Federal requirement had been enforced against the applicant before RSPA would entertain an application for a ruling. In fact, the potential application of a non-Federal requirement was sufficient for RSPA to issue a ruling.

The second standard requires an applicant for a ruling to demonstrate that the non-Federal requirement covers a particular person, entity, or situation as opposed to a purely hypothetical matter requiring an advisory opinion. As noted below, Section 13 of the HMTUSA also requires that any person who seeks a determination of preemption, whether administratively or judicially, must demonstrate that the non-Federal requirement "directly affects" the applicant. When this "standing" requirement is coupled with the "as applied or enforced" language of revised section 112, it is clear that the agency's determination under this standard will relate to those situations where the non-Federal requirement "applies" to the applicant and its circumstances *or* that the non-Federal requirement actually has been or is about to be enforced against the applicant.

The third standard of preemption applies to certain "covered subjects" pertaining to the Transportation of hazardous materials set out in amended section 105(a)(4)(B) and to "highway routing" matters which are described in amended section 105(b). Under this third Standard of preemption, a non-Federal requirement will be preempted as provided by the standards set forth in sections 105(a)(4)(A) and 105(b)(4), respectively.

Section 13 of the HMTUSA also amends section 112 of the HMTA by adding a new subsection (c) to provide that any person, including a State, political subdivision thereof, or Indian tribe, directly affected by any requirement of a State, political subdivision, or Indian tribe, may apply to the Secretary of Transportation, in accordance with regulations prescribed by the Secretary, for a determination of whether that requirement is preempted by section 105(a)(4) or section 105(b) or section 112(a).

In order to improve the effectiveness of the advisory inconsistency ruling process that RSPA had established by regulation (49 CFR 107.203–107.211), the Department included in its HMTA reauthorization proposal an administrative preemption determination process that was subsequently adopted in Section 13 of the HMTUSA. Congress stated that the inconsistency ruling process is "advisory in nature only and has no binding effect on either States or political subdivisions thereof or on persons affected by requirements thereof." H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 48 (1990). In making the change from an advisory process to the statutory preemption determination process requested by the Department, Congress stated that the "inconsistency ruling process has proven to be time-consuming, burdensome, and ineffective." H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 48 (1990). Although the inconsistency ruling process was "initially conceived to provide an alternative to litigation, the process has failed to prevent or deter parties from resolving disputes in the courts." H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 48 (1990). Thus, in the HMTUSA, Congress amended the HMTA to provide a preemption determination process to replace the existing advisory inconsistency ruling process.

As under the previous inconsistency ruling process, only the question of statutory preemption under the HMTA will be considered under the preemption determination process. A court might find a non-Federal requirement preempted for other reasons, such as statutory preemption under another Federal statute (e.g. the Federal Railroad Safety Act), preemption under State law, or preemption under the Commerce Clause and the Supremacy Clause of the U.S. Constitution because of an undue burden on interstate commerce.

To make the administrative preemption process more effective, the HMTUSA also provides that no applicant for an administrative determination may seek relief with respect to the same or substantially the same issue in any court until the Secretary has taken final action or until 180 days after filing of an application, whichever occurs first. The 180-day time limit "is intended to provide sufficient time for the Secretary to make a final determination of preemption based upon the criteria set forth in the bill. Alternatively, if the Secretary fails to act within the 180-day period, the bill seeks to provide the expeditious and definitive resolution of preemption issues by allowing the affected party to proceed with any available judicial remedies." H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 49 (1990).

Under the previous process, RSPA required that an applicant for an inconsistency ruling demonstrate how it was "affected" by the non-Federal requirement. RSPA returned applications for rulings where the applicant did not make the required demonstration. (See, e.g., February 26, 1986 letter from Alan I. Roberts, Director, Office of Hazardous Materials Transportation, to Mr. Lindsay Audin, Technical Director, Citizens Against Nuclear Trucking, stating "you have failed to demonstrate sufficiently how * * * [you] will be affected (adversely) * * *.) The HMTUSA amended the HMTA to require that the applicant be a person "directly affected" by a non-Federal requirement. As it did under the previous process, RSPA will continue to require an applicant for a preemption determination to demonstrate how it is directly affected.

There is a need to avoid issuing such determinations in the abstract. For example, a citizens' group with no identifiable interest in the outcome should not be able to seek a determination of preemption with respect to a State or local requirement. However, a citizens' group representing residents of a community with local routing requirements may be directly affected and thus have a sufficient interest in the outcome to justify access to the administrative process. The local government itself would be directly affected in that the outcome would affect its ability to enforce its requirements.

The regulated industry could be directly affected if the requirements are applied to it or enforced against it. Thus, both the preemption standard ("as applied or enforced") and the preemption determination process ("directly affected") have language intending to codify this "standing" requirement. Section 13 of the HMTUSA also amends section 112 of the HMTA to provide that a State, political subdivision thereof, or Indian tribe may not levy any fee in connection with the regulation of hazardous materials

transportation that is not "equitable" and used for purposes related to hazardous materials transportation, including enforcement and the planning, development, and maintenance of an emergency response capability. Therefore, RSPA has included this provision in the rule to reflect this statutory requirement.

Section 13 of the HMTUSA amended section 112 of the HMTA by adding a new subsection (d) to retain the administrative waiver of preemption provision. The waiver of preemption provision previously contained in the HMTA has been amended to clarify that the Secretary has the discretion to waive preemption upon a determination that the statutory criteria have been met. In this final rule, RSPA is amending its existing procedures to be consistent with this amendment.

Section 13 of the HMTUSA amends section 112 of the HMTA to allow a party to a preemption or waiver of preemption determination proceeding to seek judicial relief in the appropriate Federal district court with respect to such a determination of preemption or waiver of preemption, but provides that such actions must be commenced within 60 days after a final decision. The final rule is consistent with this provision.

IV. Section-by-Section Analysis

Nomenclature and Editorial Amendments

On September 24, 1990, RSPA was reorganized. The title of the Director of the Office of Hazardous Materials Transportation (OHMT) was changed to Associate Administrator for Hazardous Materials Safety. This rule amends the regulations covered by this rule to make those nomenclature changes whereever appropriate. This rule also makes technical and editorial changes to correspond to the nomenclature amendments and the amendments discussed below.

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

Subpart A—General Provisions

Section 107.3 Definitions

This rule adds several new definitions that are set forth in the HMTUSA, and revises two of the current definitions contained in § 107.3.

(1) This rule adds a definition of "imminent hazard" to mean the existence of a condition which presents a substantial likelihood that death, serious illness, severe personal injury, or substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion of an administrative hearing or other formal proceeding initiated to abate the risks of those effects.

The HMTUSA amended the definition of "imminent hazard" that was contained in section 111 of the HMTA, to create a lower threshold for proving that an imminent hazard exists. The amendment also makes it clear that harm to property and the environment are situations which may be addressed when an imminent hazard exists.

(2) This rule adds a definition of "Indian tribe" consistent with the meaning given that term under section 4 of the Indian Self-Determination and Education Act (25 U.S.C. 450b). The HMTUSA added this definition to the HMTA.

(3) This rule revises the definition of "person" in § 107.3 to mean an individual, firm, copartnership, corporation, company, association, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof, or government, Indian tribe, or agency or instrumentality of any government or Indian tribe when it offers hazardous materials for transportation in commerce or transports hazardous materials in furtherance of a commercial enterprise, but such term does not include (A) the United States Postal Service, or (B) for the purposes of sections 110 and 111 of the HMTA, any agency or instrumentality of the Federal Government.

The HMTUSA added this definition of "person" to the HMTA, to establish clearly the jurisdiction of the HMTA over governmental entities when they engage in the commercial transportation of hazardous materials.

(4) This rule revises the definition of "State" in § 107.3 to mean a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, American Samoa, Guam, or any other territory or possession of the United States designated by the Secretary; except that as used in section 121 of the HMTA, relating to uniformity of State registration and permitting forms and procedures, such term means a State of the United States and the District of Columbia.

The HMTUSA amended the definition of "State" that was contained in section 103 of the HMTA, to clarify that the jurisdiction of the HMTA extends to the Northern Mariana Islands, and territories or possessions of the United States designated by the Secretary. The Secretary has not designated any additional territories or possessions to be subject to the HMTA.

(5) This rule adds a definition of "transports" or "transportation" to § 107.3 to mean any movement of property by any mode, and any loading, unloading, or storage incidental thereto. This definition is contained in section 103 of the HMTA, and RSPA believes it merits inclusion in the regulations to clarify for the public the scope of the HMTA and the regulations issued thereunder.

All other terms used in the regulations are used in accordance with their statutory definitions in the HMTA.

Subpart B—Exemptions

Section 107.109 Processing of Application

This final rule revises § 107.109(a) to remove the requirement that a notice be published in the **Federal Register** of applications received for renewal of exemptions. Section 9 of the HMTUSA amended section 107(a) of the HMTA to delete this requirement. A corresponding amendment is made to § 107.111.

Subpart C—Preemption

As discussed above under *III. Preemption,* RSPA is amending its existing regulations in Subpart C to reflect the amendments made by the HMTUSA. This rule amends the existing inconsistency ruling process in 49 CFR 107.203–107.211 and the existing non-preemption determination process in 49 CFR 107.215–107.225 by simply adapting them to reflect the amendments made by the HMTUSA. Thus, the new process for preemption determinations will be identical to the previous inconsistency ruling process, and the waiver of preemption process will be identical to the previous non-preemption determination process.

Section 107.201 Purpose and Scope

This section has been revised to reflect the new terminology of preemption and waiver of preemption instead of "inconsistent" and "not preempted."

Section 107.202 Standards for Determining Preemption

This new section is added to include the standards for preemption added to the HMTA by the HMTUSA, including the standards for covered subjects (49 App. U.S.C. 1804(a)) and highway routing (49 App. U.S.C. 1804(b)), and the standards in section 13 of the HMTUSA (49 App. U.S.C. 1811(a)). New § 107.202(c) reflects the statutory requirement (49 App. U.S.C. 1811(b)) that

a State, political subdivision, or Indian tribe may not levy any fee in connection with the regulation of hazardous materials transportation that is not equitable and used for purposes related to hazardous materials transportation, including enforcement and the planning, development, and maintenance of an emergency response capability.

Sections 107.203–107.221

These sections have been revised to reflect the new terminology of preemption and waiver of preemption in place of "inconsistent" and "not preempted."

Section 107.227 Judicial Review

This final rule adds a new § 107.227 to implement 49 U.S.C. 1811(e) as amended by section 13 of the HMTUSA. Section 107.227 allows a party to a preemption or waiver of preemption determination proceeding to seek judicial relief in the appropriate Federal district court with respect to such a determination of preemption or waiver of preemption, but provides that such actions must be commenced within 60 days after a final decision.

Subpart D—Enforcement

Section 107.299 Definitions

This rule removes the definition of "knowledge" or "knowingly" in § 107.299 to add a definition of "acting knowingly" consistent with section 12(a)(2) of the HMTUSA. The HMTUSA amended section 110 of the HMTA to define "acting knowingly" to mean a person has actual knowledge of the facts giving rise to the violation, or a reasonable person acting in the circumstances and exercising due care would have such knowledge. Because the HMTA did not previously define the word "knowingly," RSPA had defined "knowledge" or "knowingly" in § 107.299 as essentially a negligence standard. In the HMTUSA, Congress effectively adopted the Department's historic interpretation of the term "knowingly."

Section 107.311 Notice of Probable Violation

With respect to civil penalties, section 12(a) of the HMTUSA extended civil penalty sanctions to violations of orders issued by the Secretary. In issuing orders directing compliance with the HMTA or the regulations issued thereunder, the Secretary's only available avenue to enforce such orders was to commence a lawsuit. Congress believed that this avenue of enforcement was time-consuming and that the costly judicial action was burdensome and contrary to the purposes of the HMTA. H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 46 (1990). Therefore, § 107.311 is amended to include civil penalty sanctions for violations of orders.

Section 107.329 Maximum Penalties

Section 12(a) of the HMTUSA also increased the amount of the maximum civil penalty that may be assessed, from $10,000 to $25,000 for each violation, and establishes a minimum civil penalty of $250 for each violation. Thus, § 107.329 is amended to incorporate these two statutory changes.

Section 107.333 Criminal Penalties Generally

Section 12(b) of the HMTUSA amended section 110(b) of the HMTA concerning criminal penalties for violations of the HMTA. This rule revises § 107.333 to make the corresponding changes. Section 107.333 provides that a person who knowingly violates § 171.2(g), concerning unlawful tampering, or willfully violates a provision of the HMTA or an order or regulation issued under the HMTA shall be fined under title 18, United States Code, or imprisoned for not more than five years, or both.

Section 107.336 Limitation on Fines and Penalties

This new section is added to reflect the amendment made by section 4 of the HMTUSA, which added a new subsection 105(a)(4)(C) of the HMTA to provide that if a State, political subdivision, or Indian tribe assesses any fine or penalty determined by the Secretary to be appropriate for a violation concerning a subject listed in subparagraph (B) of section 105(a)(4), no additional fine or penalty may be assessed for such violation by any other authority. 49 U.S.C. 1804(a)(4)(C).

SUBCHAPTER C—HAZARDOUS MATERIALS REGULATIONS

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

Section 171.1 Purpose and Scope

In § 171.1, this final rule adds a new paragraph (c) to amend the scope of the Hazardous Materials Regulations (HMR) to provide that any person who, under contract with any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal government, transports, or causes to be transported or shipped, a hazardous material shall be subject to and comply with all provisions of the HMTA, all orders and regulations issued under the HMTA, and all other substantive and procedural requirements of Federal, State, and local governments and Indian tribes (except any requirements that have been preempted), in the same manner and to the same extent as any person engaged in such activities is subject to such provisions, orders, regulations, and requirements.

Section 171.1(c) also extends the scope of the HMR to any person who, under contract to the Federal government, manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container which is represented, marked, certified, or sold by such person as qualified for use in the transportation of hazardous materials. This rule is consistent with section 20 of the HMTUSA, which clarifies that Federal contractors are subject to the HMTA and the HMR and to the same State and local laws that apply to other shippers and carriers that are not operating pursuant to a contract with the Federal Government.

Section 171.2 General Requirements

This rule amends § 171.2 to add provisions for unlawful representation and unlawful tampering. Section 5 of the HMTUSA amended section 105 of the HMTA to prohibit misrepresenting that a package or container is safe, certified, or in compliance with relevant regulations, or that a hazardous material is present in a package or container if it is not.

With respect to tampering, section 5 of the HMTUSA provides that no person shall alter, remove, deface, destroy, or otherwise tamper with any marking, label, placard, or description on a document, or any package, container or vehicle used for the transportation of hazardous materials. Therefore, consistent with the HMTUSA, this rule adds § 171.2(f) to prohibit misrepresentation that a package or container is safe, certified, or in compliance with relevant regulations, or that a hazardous material is present when it is not. This rule also adds § 171.2(g) to prohibit a person from tampering with any marking, label, placard, or description in a document, or any package, container, or vehicle used for the transportation of hazardous materials.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

Section 10 of the HMTUSA amends section 108(b) of the HMTA to allow certain products containing minor radioactive components to be moved on aircraft without an exemption.

Therefore, provisions in §§ 173.4(b), 173.421-1(b)(2), and 173.421-2(d), requiring an exemption, have been removed to reflect this statutory change.

Rulemaking Analyses

Administrative Procedure Act

Because these amendments do no more than mirror statutory changes, notice and comment procedures are "impracticable, unnecessary, or contrary to the public interest" within the meaning of section 4(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B). Public comment is unnecessary because, in making these technical amendments to give effect to the new statute, RSPA is not exercising discretion in a way that could be affected by public comment. As a consequence, RSPA is proceeding directly to a final rule. For similar reasons, and to immediately implement Congressional mandates, there is good cause for not publishing this rule at least 30 days before its effective date, as is ordinarily required by 5 U.S.C. 553(d).

Executive Order 12291 and DOT Regulatory Policies and Procedures

RSPA has determined that this rule is not major under Executive Order 12291 and is not significant under DOT's regulatory policies and procedures. (44 FR 11034; Feb. 26, 1979.) This rule will not have any direct or indirect economic impact because it does not alter any existing substantive regulations in such a way as to impose additional burdens. The cost of complying with existing substantive regulations is not being increased. Therefore, preparation of a regulatory evaluation is not warranted. Under DOT's regulatory policies and procedures, notice is not necessary because RSPA does not believe it would receive any meaningful comment.

Executive Order 12612

This final rule implements specific statutory mandates that affect the relationship between the Federal government and the States, and RSPA has no discretion in implementing these changes. Therefore, preparation of a Federalism assessment pursuant to Executive Order 12612 is not warranted.

Regulatory Flexibility Act

RSPA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. There are no direct or indirect economic impacts for small units of government, businesses, or other organizations.

Paperwork Reduction Act

There are no information collection requirements contained in this final rule.

National Environmental Policy Act

RSPA has concluded that this final rule will have no significant impact on the environment and does not require the preparation of an environmental impact statement under the National Environmental Policy Act.

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

In consideration of the foregoing, parts 107, 171, and 173 of title 49, Code of Federal Regulations, are amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 is revised to read as follows:

Authority: 49 App. U.S.C. 1421(c); 49 App. U.S.C. 1653(d), 1655; 49 App. U.S.C. 1802, 1806, 1808–1811; 49 CFR 1.45 and 1.53.

§§ 107.103, 107.107, 107.109, 107.111, 107.113, 107.115, 107.119, 107.121, 107.123, 107.207, 107.219, 107.221 [Amended]

2. In 49 CFR part 107 subparts A–D remove the words "Director, OHMT" and add, in their place, the words "Associate Administrator for Hazardous Materials Safety" in the following places:

(a) Section 107.103 (a), (c);
(b) Section 107.107;
(c) Section 107.109 (b), (c), (c)(2), (d), (e);
(d) Section 107.111 (a), (c);
(e) Section 107.113 (c);
(f) Section 107.115 (a), (b), (c);
(g) Section 107.119 (b), (c), (d), (e);
(h) Section 107.121;
(i) Section 107.123 (b);
(j) Section 107.207 (a), (b);
(k) Section 107.219 (a), (b), (c); and
(l) Section 107.221 (a).

§§ 107.103, 107.105, 107.111, 107.123, 107.215 [Amended]

3. In 49 CFR part 107 subparts A–D remove the words "Office of Hazardous Materials Transportation" and add, in their place, the words "Associate Administrator for Hazardous Materials Safety" in the following places:

(a) Section 107.103 (b)(1);
(b) Section 107.105 (a)(1);
(c) Section 107.111 (b)(1);
(d) Section 107.123 (a); and
(e) Section 107.215(b)(1).

§§ 107.5, 107.7, 107.117, 107.205, 107.217, 107.219, 107.221, 107.223, 107.301, 107.303, 107.305, 107.309, 107.335 [Amended]

4. In 49 CFR part 107 subparts A–D remove the word "OHMT" each place it appears and add, in its place, the words "Associate Administrator for Hazardous Materials Safety" in the following places:

(a) Section 107.5 (a), (b);
(b) Section 107.7 (a), (c);
(c) Section 107.117 (a);
(d) Section 107.205 (a), (b), (c);
(e) Section 107.217 (a), (b)(2), (c), (d), (e);
(f) Section 107.219 (d);
(g) Section 107.221 (d);
(h) Section 107.223;
(i) Section 107.301;
(j) Section 107.303;
(k) Section 107.305 (a), (b), (c), (d);
(l) Section 107.309 (a), (b)(1); and
(m) Section 107.335.

Subpart A—General Provisions

§ 107.3 [Amended]

5. Section 107.3 is amended by revising the introductory language, revising the definitions of "person" and "State" and adding new definitions in alphabetical order as follows:

§ 107.3 Definitions.

All terms defined in Section 103 of the Act are used in their statutory meaning. Other terms used in this part are defined as follows:

* * * * *

Imminent Hazard means the existence of a condition which presents a substantial likelihood that death, serious illness, severe personal injury, or substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion of an administrative hearing or other formal proceeding initiated to abate the risks of those effects.

Indian Tribe shall have the meaning given that term under section 4 of the Indian Self-Determination and Education Act (25 U.S.C. 450b).

* * * * *

Person means an individual, firm, copartnership, corporation, company,

association, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof, or government, Indian tribe, or agency or instrumentality of any government or Indian tribe when it offers hazardous materials for transportation in commerce or transports hazardous materials in furtherance of a commercial enterprise, but such term does not include:

(1) The United States Postal Service, or

(2) For the purposes of sections 110 and 111 of the Act (49 App. U.S.C. 1809–1810), any agency or instrumentality of the Federal Government.

* * * * *

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, American Samoa, Guam, or any other territory or possession of the United States designated by the Secretary; except that as used in section 121 (49 App. U.S.C. 1819), relating to uniformity of State registration and permitting forms and procedures, such term means a State of the United States and the District of Columbia.

Transports or "transportation" means any movement of property by any mode, and any loading, unloading, or storage incidental thereto.

§ 107.9 [Amended]

6. In § 107.9(c), remove the words "Applications for inconsistency rulings and nonpreemption" and add, in their place, the words "Applications for preemption and waiver of preemption."

Subpart B—Exemptions

7. In Section 107.109 paragraph (a) is revised to read as follows:

§ 107.109 Processing of application.

(a) After an application for an exemption or renewal of an exemption is determined to be complete, the Associate Administrator for Hazardous Materials Safety dockets the application and, for an application under § 107.103, publishes a notice in the **Federal Register** affording an opportunity for interested persons to comment. All comments received before the close of the comment period are considered before final action is taken on such an application.

* * * * *

8. In § 107.111 paragraph (d) is revised to read as follows:

§ 107.111 Party to an exemption.

* * * * *

(d) The Associate Administrator for Hazardous Materials Safety publishes in the **Federal Register** a notice of each application received under § 107.103, each initial determination made and each renewal granted under this section.

Subpart C—Preemption

9. In § 107.201, paragraphs (a) and (d) are revised to read as follows:

§ 107.201 Purpose and scope.

(a) This subpart prescribes procedures by which:

(1) Any person, including a State or political subdivision thereof or Indian Tribe, directly affected by any requirement of a State or political subdivision or Indian tribe, may apply for a determination as to whether that requirement is preempted under the section 105(a)(4), section 105(b), or section 112(a) of the Act or regulations issued thereunder, and

(2) A State or political subdivision or Indian tribe may apply for a waiver of preemption with respect to any requirement that the State or political subdivision or Indian Tribe acknowledges to be preempted by section 105(a)(4), section 105(b), or section 112(a) of the Act or regulations issued thereunder.

* * * * *

(d) Unless otherwise ordered by the Associate Administrator for Hazardous Materials Safety, an application for a preemption determination which includes an application for a waiver of preemption will be treated and processed solely as an application for a preemption determination.

10. Section 107.202 is added to part 107 to read as follows:

§ 107.202 Standards for determining preemption.

(a) Except as provided in subsection 105(b) (49 App. U.S.C. 1804(b)) and unless otherwise authorized by Federal law, any law, regulation, order, ruling, provision, or other requirement of a State or political subdivision thereof or an Indian tribe, which concerns the following subjects and which is not substantively the same as any provision of this Act or any regulation under such provision which concerns such subject, is preempted:

(1) The designation, description, and classification of hazardous materials.

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials.

(3) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents.

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials.

(5) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

(b) Except as provided in § 107.221 and unless otherwise authorized by Federal law, any requirement of a State or political subdivision or Indian tribe is preempted if—

(1) Compliance with both the State or political subdivision or Indian tribe requirement and any requirement under the Act or of a regulation issued under the Act is not possible,

(2) The State or political subdivision or Indian tribe requirement as applied or enforced creates an obstacle to the accomplishment and execution of the Act or the regulations issued under the Act, or

(3) It is preempted under section 105(a)(4) or section 105(b) of the Act (49 U.S.C. 1804(a)(4) or 1804(b)).

(c) A State or political subdivision thereof or Indian tribe may not levy any fee in connection with the transportation of hazardous materials that is not equitable and not used for purposes related to the transportation of hazardous materials, including enforcement and the planning, development, and maintenance of a capability for emergency response.

§ 107.203 [Amended]

11. Remove the caption "Inconsistency Rulings" that precedes § 107.203 and add in its place "Preemption Determinations."

12. Section 107.203 is amended by revising paragraphs (a), (b), and (c), and adding paragraph (d) to read as follows:

§ 107.203 Application.

(a) Any person, including a State, political subdivision, or Indian tribe, directly affected by any requirement of a State, political subdivision, or Indian tribe, may apply to the Associate Administrator for Hazardous Materials Safety for a determination of whether that requirement is preempted by section 105(a)(4) or 105(b) of the Act (49 U.S.C. 1804(a)(4) or 1804(b)) or 49 CFR 107.202(b). The Associate Administrator for Hazardous Materials Safety shall publish notice of the application in the **Federal Register.**

(b) Each application filed under this section for a determination must:

(1) Be submitted to Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001. Attention: Hazardous Materials Preemption Docket;

(2) Set forth the text of the State or political subdivision or Indian tribe requirement for which the determination is sought;

(3) Specify each requirement of the Act or the regulations issued under the Act with which the applicant seeks the State or political subdivision or Indian tribe requirement to be compared;

(4) Explain why the applicant believes the State or political subdivision or Indian tribe requirement should or should not be preempted under the standards of § 107.202; and

(5) State how the applicant is affected by the State or political subdivision or Indian tribe requirement.

(c) The filing of an application for a determination under this section does not constitute grounds for noncompliance with any requirement of the Act or any regulation issued under the Act.

(d) Once the Associate Administrator for Hazardous Materials Safety has published notice in the **Federal Register** of an application received under paragraph (a) of this section, no applicant for such determination may seek relief with respect to the same or substantially the same issue in any court until final action has been taken on the application or until 180 days after filing of the application, whichever occurs first. Nothing in § 107.203(a) prohibits a State or political subdivision or Indian tribe, or any other person directly affected by any requirement of a State or political subdivision thereof or Indian tribe, from seeking a determination of preemption in any court of competent jurisdiction in lieu of applying to the Associate Administrator for Hazardous Materials Safety under paragraph (a) of this section.

§ 107.207 [Amended]

13. In § 107.207(b)(1), remove the word "ruling" and add in its place the word "determination."

14. In § 107.209, the section heading and paragraphs (a) and (b) are revised, paragraph (c) is removed, and paragraphs (d), (e), and (f) are revised and redesignated as paragraphs (c), (d), and (e) as follows:

§ 107.209 Determination.

(a) Upon consideration of the application and other relevant information received, the Associate Administrator for Hazardous Materials Safety issues a determination.

(b) Notwithstanding that an application for a determination has not been filed under § 107.203, the Associate Administrator for Hazardous Materials Safety, on his or her own initiative, may issue a determination as to whether a particular State or political subdivision or Indian tribe requirement is preempted under the Act or the regulations issued under the Act.

(c) The determination includes a written statement setting forth the relevant facts and the legal basis for the determination and provides that any person aggrieved thereby may file an appeal with the Administrator, RSPA.

(d) The Associate Administrator for Hazardous Materials Safety serves a copy of the determination upon the applicant, any other person who participated in the proceeding, and upon any other person readily identifiable by the Associate Administrator as one who is affected by the determination. A copy of each determination is placed on file in the public docket. The Associate Administrator may publish the determination or notice of the determination in the **Federal Register**.

(e) A determination issued under this section constitutes an administrative determination as to whether a particular requirement of a State or political subdivision or Indian tribe is preempted under the Act or regulations issued thereunder. The fact that a determination has not been issued under this section with respect to a particular requirement of a State or political subdivision or Indian tribe carries no implication as to whether the requirement is preempted under the Act or regulations issued thereunder.

§ 107.211 [Amended]

15. In § 107.211, remove the word "ruling" each time it appears and replace it with the word "determination."

§ 107.215 [Amended]

16. In the heading preceding § 107.215 remove the word "Non-Preemption" and add, in its place, the words "Waiver of Preemption."

17. In § 107.215, paragraph (a) is revised to read as follows:

§ 107.215 Application.

(a) Any State or political subdivision or Indian tribe may apply to the Associate Administrator for Hazardous Materials Safety for a waiver of preemption with respect to any requirement that the State or political subdivision or Indian tribe acknowledges to be preempted by section 105(a)(4) or section 105(b) of the Act or § 107.202. The Associate Administrator may waive preemption with respect to such requirement upon a determination that such requirement—

(1) Affords an equal or greater level of protection to the public than is afforded by the requirements of the Act or regulations issued under the Act, and

(2) Does not unreasonably burden commerce.

* * * * *

18. In § 107.215(b) remove the word "nonpreemption" and, add in its place, the words "waiver of preemption."

19. In § 107.215(b) (4) and (5) remove the word "inconsistent" and add, in its place, the word "preemption."

§ 107.219 [Amended]

20. In § 107.219(c), (d) and (e) remove the word "non-preemption" and add, in its place, the words "waiver of preemption."

21. In § 107.221, paragraphs (b) and (e) are revised to read as follows:

§ 107.221 Determination and Order.

* * * * *

(b) The Associate Administrator for Hazardous Materials Safety may issue a waiver of preemption order only if he finds that the State or political subdivision or Indian tribe requirement affords the public a level of safety at least equal to that afforded by the requirements of the Act and the regulations issued under the Act and does not unreasonably burden commerce. In determining whether the State or political subdivision or Indian tribe requirement unreasonably burdens commerce, the Associate Administrator considers the following factors:

* * * * *

(e) An order issued under this section constitutes an administrative determination whether a particular requirement of a State or political subdivision or Indian tribe is preempted under the Act or any regulations issued thereunder, or whether preemption is waived.

22. Section 107.227 is added to read as follows:

§ 107.227 Judicial Review.

A party to a proceeding under § 107.203(a) or § 107.215(a) may seek review by the appropriate district court of the United States of a decision of the Administrator under such proceeding only by filing a petition with such court within 60 days after such decision becomes final.

Subpart D—Enforcement

23. The authority citation for Subpart D—Enforcement is amended to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1808, and 1809; 49 CFR 1.53 and part 1, App. A.

24. Section 107.299 is amended by removing the definition of "knowledge" and "knowingly" and by adding the following new definition.

§ 107.299 Definitions.

* * * * *

Acting knowingly means acting or failing to act while (1) having actual knowledge of the facts giving rise to the violation, or (2) having such knowledge as a reasonable person acting in the circumstances and exercising due care would have had.

* * * * *

§ 107.311 [Amended]

25. In § 107.311 (a) and (b)(1) after the word "Act," insert the words "an order issued under the Act,".

26. Section 107.329 is revised to read as follows:

§ 107.329 Maximum penalties.

(a) A person who knowingly violates a requirement of the Act, an order issued under the Act, this subchapter, Subchapter C of this chapter, or an exemption issued under Subchapter B of this chapter applicable to the transporting of hazardous materials or the causing of them to be transported or shipped is liable for a civil penalty of not more than $25,000 and not less than $250 for each violation. When the violation is a continuing one, each day of the violation constitutes a separate offense.

(b) A person who knowingly violates a requirement of the Act, an order issued under the Act, this subchapter, subchapter C of this chapter, or an exemption issued under subchapter B of this chapter applicable to the manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a packaging or container which is represented, marked, certified or sold by that person as being qualified for use in the transportation of hazardous materials in commerce is liable for a civil penalty of not more than $25,000 and not less than $250 for each violation.

27. Section 107.333 is revised to read as follows:

§ 107.333 Criminal penalties generally.

A person who knowingly violates § 171.2(g) or willfully violates a provision of the Act or an order or regulation issued under the Act shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both.

28. Section 107.336 is added to part 107 to read as follows:

§ 107.336 Limitation on fines and penalties.

If a State or political subdivision or Indian tribe assesses any fine or penalty determined by the Secretary to be appropriate for a violation concerning a subject listed in § 107.202(a), no additional fine or penalty may be assessed for such violation by any other authority.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

29. The authority citation for part 171 is revised to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808, 1818; 49 CFR part 1.

30. Section 171.1 is amended by adding a new paragraph (c) to read as follows:

§ 171.1 Purpose and scope.

* * * * *

(c) Any person who, under contract with any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government, transports, or causes to be transported or shipped, a hazardous material or manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container which is represented, marked, certified, or sold by such person as qualified for use in the transportation of hazardous materials shall be subject to and comply with all provisions of the Act, all orders and regulations issued under the Act, and all other substantive and procedural requirements of Federal, State, and local governments and Indian tribes (except any such requirements that have been preempted by the Act or any other Federal law), in the same manner and to the same extent as any person engaged in such activities that are in or affect commerce is subject to such provisions, orders, regulations, and requirements.

31. Section 171.2 is amended by adding new paragraphs (f) and (g) to read as follows:

§ 171.2 General requirements.

* * * * *

(f) No person shall, by marking or otherwise, represent that—

(1) A container or package for the transportation of hazardous materials is safe, certified, or in compliance with the requirements of this title unless it meets the requirements of all applicable regulations issued under the Act; or

(2) A hazardous material is present in a package, container, motor vehicle, rail freight car, aircraft, or vessel, if the hazardous material is not present.

(g) No person shall unlawfully alter, remove, deface, destroy, or otherwise tamper with—

(1) Any marking label, placard, or description on a document required by the Act, or a regulation issued under the Act; or

(2) Any package, container, motor vehicle, rail freight car, aircraft, or vessel used for the transportation of hazardous materials.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

32. The authority citation for part 173 is revised to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808; 49 CFR part 1, unless otherwise noted.

§ 173.4 [Amended]

33. In § 173.4, paragraph (b) is amended by removing the words "After May 2, 1991, a package containing a radioactive material may not be offered for transportation aboard a passenger-carrying aircraft unless that material is intended for use in, or incident to, research, medical diagnosis or treatment."

§ 173.421-1 [Amended]

34. In § 173.421–1, paragraph (b)(2) is amended by removing the words "After May 2, 1991, it is also necessary to comply with §§ 173.448(f) and 175.700(c) of this subchapter."

§ 173.421-2 [Amended]

35. In § 173.421–2, paragraph (d) is removed.

Issued in Washington, DC, on February 20, 1991, under authority delegated in 49 CFR 1.53.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc. 91–4531 Filed 2–27–91; 8:45 am]

BILLING CODE 4910-60-M

federal register

Thursday
February 28, 1991

Part X

Department of Education

Developmental Bilingual Education and Special Alternative Instructional Programs; Notice of Proposed Priority

DEPARTMENT OF EDUCATION

Office of Bilingual Education and Minority Languages Affairs

Developmental Bilingual Education and Special Alternative Instructional Programs

AGENCY: Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Secretary of Education proposes an absolute priority for a special competition in fiscal year (FY) 1991 under the Developmental Bilingual Education and Special Alternative Instructional Programs administered by the Office of Bilingual Education and Minority Languages Affairs (OBEMLA).

DATES: Comments must be received on or before April 1, 1991.

ADDRESSES: All comments concerning this proposed priority should be addressed to Harry G. Logel, U.S. Department of Education, OBEMLA, 400 Maryland Avenue, SW., room 5086, Switzer Building, Washington, DC 20202–6510.

FOR FURTHER INFORMATION CONTACT: Harry G. Logel, telephone: (202) 732–5715. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: Awards under the Developmental Bilingual Education (DBE) and the Special Alternative Instructional (SAI) Programs are made to local educational agencies (LEAs) to provide instructional services to limited English proficient (LEP) children. The DBE Program provides structured English language instruction and instruction in a second language. It is designed to help LEP children achieve competence in English and also to help children whose native language is English achieve competence in a second language. The SAI Program provides structured English language instruction and special instructional services to enable LEP children to achieve competence in English and to meet grade-promotion and graduation standards. Authority for these programs is found in section 7021 of the Bilingual Education Act (20 U.S.C. 3291).

The Secretary proposes a special competition for demonstration middle school projects under the DBE and SAI Programs in order to identify effective educational approaches that foster academic achievement and dropout prevention. The key components these projects would have to include are magnet schools, instructional approaches emphasizing the arts and humanities, and evaluation plans designed to measure project effectiveness in increasing academic achievement and student retention. The evaluation plans would have to meet the evaluation requirements that apply to all projects funded under the Basic Programs, as specified in the program regulations in 34 CFR 500.50–500.52.

The Secretary would be particularly interested in applications that address the following additional elements: site-based management, community involvement, and collaboration with local institutions of higher education. However, an application that addresses one or more of these additional elements would not receive additional consideration or additional points in the competition. An application that does not address one or more of these additional elements would not be at any competitive disadvantage.

Approximately $781,000 would be available for funding these projects. The average size of awards is estimated to be higher than the average funding level of current grants under the DBE and SAI Programs in order to support the extensive evaluation activities necessary to enable grantees to develop effective program models suitable for widespread replication.

The final priority will be established on the basis of public comment regarding this proposed priority and other relevant Departmental considerations, and will be announced in a notice in the **Federal Register**. A notice inviting applications for this competition will be published at that time, after which application packages will be available. This competition will be in addition to the regular competitions under the DBE and SAI Programs in FY 1991.

This notice of proposed priority does not solicit applications, and Department of Education staff will not review concept papers or pre-applications. The publication of this proposed priority does not bind the Federal government to fund projects in this area, except as otherwise directed by statute. Funding of particular projects depends on the final priority, the availability of funds, and the quality of applications that are received.

Proposed Priority

In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference in a special competition in FY 1991 under the Developmental Bilingual Education and Special Alternative Instructional Programs to applications that meet the following priority:

To be eligible for funding, a proposed project would have to:

(1) Be restricted to one or more grade levels from grades six through nine in a district-wide magnet school;

(2) Involve an instructional approach that emphasizes the arts and humanities; and

(3) Incorporate an evaluation plan designed to measure the project's effectiveness in increasing academic achievement and student retention.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority. All comments submitted in response to this proposed priority will be available for public inspection during and after the comment period in room 5607, Switzer Building, 330 "C" Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Authority: 20 U.S.C. 3291.

Dated: February 2, 1991.

Ted Sanders,

Acting Secretary of Education.

[FR Doc. 91–4692 Filed 2–27–91; 8:45 am]

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Federal Register

Thursday
February 28, 1991

Part XI

Department of Transportation

Federal Aviation Administration

14 CFR Part 91 and 161

Phaseout of Stage 2 Airplanes Operating in the 48 Contiguous United States and the District of Columbia and Approval of Airport Noise and Access Restrictions; Proposed Rules

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 26433; Notice No. 91-7]

RIN 2120-AD96

Phaseout of Stage 2 Airplanes Operating in the 48 Contiguous United States and the District of Columbia

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes revisions to the airplane operating rules to require a phaseout of Stage 2 airplanes operated in the 48 contiguous United States and the District of Columbia before December 31, 1999. These revisions implement sections 9308 and 9309 of the Airport Noise and Capacity Act of 1990.

DATES: Comments must be received on or before April 15, 1991. Because of the statutory requirement to issue a final rule in this proceeding by July 1, 1991, the FAA will be unable to entertain requests to extend the comment period; however, late-filed comments will be considered to the extent practicable.

ADDRESSES: Send comments on the notice in triplicate to: Federal Aviation Administration (FAA), Office of the Chief Counsel, Attn: Rules Docket, room 316G, Docket No. 26433, 800 Independence Avenue, SW., Washington, DC, 20591 or deliver comments in triplicate to: FAA Rules Docket, room 916G, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may be examined in the Rules Docket, weekdays except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. William Albee, Manager, Policy and Regulatory Division (AEE-300), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267-3553.

SUPPLEMENTARY INFORMATION: .

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments and by commenting on the possible environmental, energy, or economic impacts of this proposal. Comments should contain the regulatory docket or notice number and be submitted in triplicate to the address above. All comments received, as well as a report summarizing any substantive public contact with Federal Aviation Administration personnel on this rulemaking will be filed in the docket. In addition, the FAA plans to conduct public meetings in Washington, DC, Chicago, Illinois, and Seattle, Washington, in March, 1991, for the purpose of receiving public comment. All comments received at public meetings concerning this notice will be filed in the docket. The docket is available for public inspection both before and after the closing date for comments. Before taking any final action on the proposal, the Administrator will consider the comments made on or before March 29, 1991, and the proposal may be changed in response to the comments received. The FAA will acknowledge the receipt of a comment if the commenter submits a self-addressed, stamped postcard with the comment and on the postcard the following statement is made: "Comments to Docket No. 26433." When the comment is received by the FAA, the postcard will be dated, time stamped, and returned to the commenter.

Availability of the NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Requests should be identified by the docket number of this proposed rule. Persons interested in being placed on a mailing list for future notices of proposed rulemaking should also request a copy of Advisory Circular No. 11-2, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

In December 1976, the FAA added "Subpart E—Operating Noise Limits" to part 91 of the Federal Aviation Regulations (FAR) (14 CFR part 91), which became Subpart I—Operating Noise Limits with the August 18, 1989, recodification of part 91. Subpart I requires that airplanes operated by U.S. operators comply with part 36 Stage 2 noise levels by January 1, 1985, in order to operate in the United States (41 FR 56046, December 23, 1976). This subpart required the reduction of aircraft noise by (1) replacing the older fleet with new, quieter airplanes; (2) reengining the aircraft; or (3) using noise reduction technology, such as hushkits, that had been shown to be technologically feasible and economically reasonable for use on older, four-engine turbojets. In November 1980, subpart E was amended to include foreign operations in the United States whether conducted by foreign or U.S. operators (45 FR 79302, November 28, 1980).

The total number of air carrier operations and enplanements has increased considerably since 1978. Despite such growth, noise levels around most airports have decreased, primarily because of the introduction of quieter aircraft into the fleet. Stage 1 airplanes have been retired or modified to meet Stage 2 aircraft noise standards, and quieter Stage 3 airplanes have come into service. However, even with such advances, approximately 2.7 million individuals currently live within areas that are considered to be exposed to significant airplane noise (a day-night average sound level of 65 decibels or more).

Currently, more than 400 U.S. airports have adopted some type of airport access restriction or other action to reduce aircraft noise or to mitigate the effects of that noise. These efforts range from restrictions that generally do not affect the efficiency of the national aviation system (e.g., rapid airplane climb to altitude or preferential runway use to minimize takeoff noise impact on local communities) to those that have an obvious impact on system operations (e.g., curfews and limits on operations by aircraft type). Nose-related restrictions have been levied by airport proprietors and the courts in response to pressure from local community complaints concerning airport noise.

On November 5, 1990, Congress passed the Airport Noise and Capacity Act of 1990 ("the legislation"). In the legislation, the Congress recognized the need to establish a national aviation noise policy. Congress found that, because aviation is a national and international system, such a policy must be created at the national level. A critical part of that national policy was set by Congress when it directed an expedited phaseout of Stage 2 airplanes. Specifically, the legislation prohibits the operation of Stage 2 aircraft to or from an airport in the contiguous United States and the District of Columbia ("the contiguous States") after December 31, 1999.

In addition, the legislation provides limited authority to the Secretary of Transportation to grant waivers to allow operation of a limited number of Stage 2 airplanes beyond the statutory deadline.

The legislation also directs the Secretary of Transportation to issue regulations implementing the review and approval procedures defined in the statute for noise and access restrictions

on Stage 2 and Stage 3 operations proposed by airport proprietors. These regulations are to be proposed as part of the national aviation noise policy. The legislation requires that this national policy be in place by July 1, 1991. The Secretary of Transportation has delegated the authority to issue regulations for the phaseout and the noise restriction review to the Administrator of the Federal Aviation Administration. This document sets forth proposed regulations regarding the phaseout and nonaddition of Stage 2 airplanes. The proposed regulations regarding airport restrictions are presented elsewhere in this issue of the **Federal Register.**

Synopsis of the Proposal

Pursuant to the legislative mandate, this NPRM proposes to amend subpart I of 14 CFR part 91 by establishing a schedule of reductions of affected Stage 2 airplanes, leading to a prohibition on their use in the contiguous States by December 31, 1999, and by precluding the operation of airplanes in the contiguous States that were imported pursuant to contracts executed after November 5, 1990. The preamble addresses two options that may form the basis for a final rule. The difference between the two is that the second option would permit transferability of the right to operate Stage 2 airplanes within the overall ceiling set by the phaseout schedule.

With regard to enforcement, the legislation states that:

> Violations of (sections 9308 and 9309) and regulations issued to carry out such sections shall be subject to the same civil penalties and procedures as are provided by title IX of the Federal Aviation Act of 1958 for violations of title IX.

Accordingly, the FAA intends that the final regulations adopted will be enforced in accordance with FAR part 13, Investigative and Enforcement Procedures.

The proposed rule uses a concept referred to as a "base level" for operators of Stage 2 airplanes. An existing U.S. operator's base level would be the maximum number of owned or leased Stage 2 airplanes that were listed on its operations specifications for operation to or from airports in the contiguous States on any one day in 1990. In addition, the base level would include those Stage 2 airplanes returned to service after lease to a foreign carrier, as defined in the legislation and proposed § 91.805(a)(5), and those Stage 2 aircraft imported by an eligible entity, as defined in the legislation and proposed § 91.805(a)(6).

Any such airplanes added to the base level under either of these provisions would be subject to the phaseout compliance dates. As an example, under option 1 below, if the largest number of Stage 2 airplanes for which a U.S. operator held operations specifications during any day in 1990 was 100, it would need to reduce the number of Stage 2 airplanes it operates to 75 by December 31, 1994. If before that date the operator adds to its base level three airplanes that were leased to foreign carriers and one that was imported, its base level would be increased to 104, and it would be authorized to operate a maximum of 78 Stage 2 airplanes on and after December 31, 1994. Under Option 2, the operator would have the choice of proceeding in the same fashion or attempting to acquire additional operating rights from another operator. Such rights would be available only if the second operator had already exceeded its required reduction. That is, only "extra" reductions could be transferred.

Under Option 1, once an operator has reduced the number of Stage 2 airplanes it operates to a required compliance point, it would not be permitted to increase its Stage 2 fleet above that level. However, if the operator further reduces the number of its Stage 2 airplanes below the permitted maximum, the operator may add Stage 2 airplanes to its fleet as long as the maximum level is not exceeded. For example, if an operator had a base level of 100 airplanes, it would need to reduce that number to 75 by the first compliance date. If between the first and second compliance dates, the operator reduces its operating Stage 2 airplanes to 70, it would then be able to operate up to 5 more airplanes that were added pursuant to one of the two proposed provisions or acquired from another U.S. operator. These additional airplanes could be operated until the second compliance date, when the operator's number of Stage 2 airplanes would have to be reduced to 50. Under Option 2, an operator would have the flexibility to operate additional Stage 2 airplanes for which it is able to obtain rights from other operators.

New entrant U.S. operators would not have a base level. New entrants instituting service prior to December 31, 1994, could operate any number of Stage 2 airplanes. On and after December 31, 1994, the new entrant carrier would have to operate at least 25 percent Stage 3 airplanes. Similarly, a new entrant that institutes service after December 31, 1996, would have to begin operations with at least 50 percent of its fleet complying with Stage 3. After December 31, 1998, a new entrant would have to have a fleet of at least 75 percent Stage 2 airplanes at the start of service.

For a foreign operator of Stage 2 airplanes, the base level would be the total number of Stage 2 operations that it conducted to or from airports in the contiguous States from January 1, 1990, through December 31, 1990. A foreign operator would be required to reduce its annual Stage 2 operations under the same compliance schedule required of U.S. operators for Stage 2 airplanes. For the reasons discussed below, it appears that transfer of operating rights among foreign operators would be substantially more difficult. Comments are invited on whether a program of Stage 2 transferability could be adapted to the phaseout of Stage 2 operations by these operators.

The following section-by-section explanation describes the FAA's proposed approach to implementing the provisions of the legislation.

Section-by-Section Explanation of Proposed Rule

Section 91.801 Applicability: Relation to Part 36

Proposed § 91.801 states that 14 CFR part 91, subpart I Operating Noise Limits, which encompasses §§ 91.801 through 91.821, would apply to any civil subsonic turbojet airplane that has a maximum certificated takeoff weight of more than 75,000 pounds, that has a standard airworthiness certificate (or its equivalent), and that operates to or from any airport in the United States under 14 CFR part 121, 125, 129, or 135.

References in part 91 to part 36, subpart I refer to the noise levels of appendix C of part 36.

The proposed rule also would include a provision to allow for the acceptance of noise level determinations made pursuant to Annex 16 of the International Civil Aviation Organization, which specifies noise requirements, divided into various chapters, that are generally comparable to the U.S. stage determinations.

The FAA notes that, although the operating noise limit regulations have applied only to certain aircraft that have standard airworthiness certificates, the legislation does not distinguish the aircraft subject to the legislation by the type of airworthiness certificates they possess. The FAA intends to cover those airplanes normally subject to the noise rules and does not intend to limit the operation of those airplanes that have experimental or other restricted certificates. The FAA notes that there are few civil subsonic turbojet airplanes

with a maximum certificated takeoff weight of more than 75,000 pounds that possess other than standard airworthiness certificates. Moreover, the FAA believes that these airplanes, which are generally experimental and owned by manufacturers or used for limited purposes such as firefighting, do not significantly add to the noise environment in the United States and that their operation for these limited purposes should not be discouraged.

Section 91.803 Final Compliance: Subsonic Airplanes

Paragraph (a) of proposed § 91.803 would prohibit the operation of aircraft that do not meet Stage 2 or Stage 3 noise levels to or from any airport in the contiguous States.

Proposed § 91.803(b) would implement the final compliance date for Stage 3 operations set by the legislation, which states:

> After December 31, 1999, no person may operate to or from an airport in the United States any civil subsonic turbojet aircraft with a maximum weight of more than 75,000 pounds unless such aircraft complies with the Stage 3 noise levels as determined by the Secretary.

The legislation also provides that this prohibition:

> * * * shall not apply to aircraft which are used solely to provide air transportation outside the 48 contiguous States.

Accordingly, proposed § 91.803(b) limits the phaseout to Stage 2 airplanes that are operated to or from any airport in the contiguous States. Finally, the legislation provides a limited waiver provision for certain operators. That waiver provision, described in the discussion of proposed § 91.809, is acknowledged in proposed § 91.803(b) as an exception to the final compliance date.

Section 91.805 Entry of Stage 2 Aircraft; Prohibition on Additions to Stage 2 Fleet

The legislation contains a provision, known as the "nonaddition rule," that prohibits any addition to the total number of Stage 2 airplanes currently operated or eligible to be operated into the contiguous States. Specifically, this portion of the legislation states:

> [N]o person may operate a civil subsonic turbojet aircraft with a maximum weight of more than 75,000 pounds which is imported into the United States on or after (November 5, 1990) unless—
>
> (1) it complies with Stage 3 noise levels, or
>
> (2) it was purchased by the person who imports the aircraft into the United States under a written contract executed before (November 5, 1990).

Section 91.805(a) would prohibit the operation to or from any airport in the contiguous States of any airplane that does not comply with one of the categories of airplanes described therein. The categories of airplanes de scribed in paragraph (a) were derived from several sections of the legislation.

Proposed § 91.805(a)(1) would allow the operation of any airplane that meets the Stage 3 noise levels.

Proposed § 91.805(a)(2) would allow the operation of an airplane that complies with Stage 2 noise levels and is included in the base level of a U.S. operator, as defined in proposed § 91.807(b)(1).

Proposed § 91.805(a)(3) would allow the operation of an airplane that complies with Stage 2 noise levels and is operated by a foreign air carrier pursuant to the applicable provisions of proposed § 91.807. Proposed § 91.805(a)(4) would allow the operation of an airplane that complies with Stage 2 noise levels and is operated by a foreign operator other than for the purpose of foreign air commerce.

Proposed § 91.805(a)(5) is taken directly from the legislation and would provide for the operation of an airplane that is owned by one of the U.S. entities described and was leased to a foreign air carrier on November 5, 1990. The legislation does this by limiting the statutory construction of the term "imported," effectively allowing the operation of these airplanes that would otherwise be prohibited by the nonaddition rule. The legislation states that for purposes of the nonaddition rule:

> * * * an aircraft shall not be considered to have been imported into the United States if such aircraft—
>
> (1) on the date of the enactment of this Act is owned—
>
> (A) by a corporation, trust, or partnership which is organized under the laws of the United States or any State (including the District of Columbia);,
>
> (B) by an individual who is a citizen of the United States; or
>
> (C) by any entity which is owned or controlled by a corporation, trust, partnership, or individual described in this paragraph; and
>
> (2) enters into the United States not later than 6 months after the date expiration of a lease agreement (including any extensions thereof) between an owner described in paragraph (1) and a foreign air carrier.

The FAA notes that the term "owner" as used in the nonaddition rule is not equivalent to the term citizen of the United States as that term is defined in section 101 of the Federal Aviation Act. Under proposed § 91.805(a)(5), owners of Stage 2 airplanes could bring them into the United States, and those airplanes would not be considered "imported" under the nonaddition rule. For purposes of this section, an owner would be any entity described in § 91.805(a)(5)(i) that has indicia of ownership sufficient to register the airplane in the United States pursuant to part 47 of the Federal Aviation Regulations. Examples of such owners would include trustees and conditional vendees under purchase option leases intended for security only. For a recent interpretation of ownership with regard to leased aircraft, see the FAA Notice of Legal Opinion published at 55 FR 40502, October 3, 1990.

As quoted above, the legislation also allows the operation of an airplane that was imported in to the United States on or after November 5, 1990, and—

> * * * was purchased by the person who imports that aircraft into the United States under a written contract executed before (November 5, 1990).

This language is adopted in proposed § 91.805(a)(6) to allow the operation of such airplanes. The FAA interprets this section of the law as protecting the ownership interests of individual U.S. citizens and certain entities.

Without proposed § 91.805(a)(6), an entity so situated might be able to bring its airplane into the United States, but not operate it; nor would it be able to lease or sell the airplane to a U.S. operator with an established base level of Stage 2 airplanes. Accordingly, proposed § 91.805(a)(6) allows for the operation of these airplanes, and the foreseeable market of these airplanes is facilitated by the additions to the number of airplanes available to an operator under proposed § 91.807(b).

The FAA does not interpret the term "importer" in proposed § 91.805(a)(6) to mean anyone other than a person described in the legislation as incorporated in proposed § 91.805 (a)(5)(i) (recognizing that the term "owner" may not apply). To expand the definition of "person who imports" beyond these designations might unreasonably expand the number of Stage 2 airplanes that Congress specifically sought to limit by including the nonaddition rule in the legislation. The FAA specifically seeks comment from any person that potentially would be covered under proposed § 91.805(a)(6), but that is not described in proposed § 91.805(a)(5)(i), so that all relevant circumstances may be considered before a final rule is issued. The FAA does not intend that the terms "contract" or "written contract executed" be given other than the

standard legal interpretation as accepted in the field of contract law.

The legislation also states that the nonaddition rule:

> * * * shall not apply to aircraft which are used solely to provide air transportation outside the 48 contiguous States. Any civil subsonic turbojet aircraft with a maximum weight of more than 75,000 pounds which is imported into a noncontiguous State or territory or possession of the United States on or after the date of enactment of this Act may not be used to provide air transportation in the 48 contiguous States unless such aircraft complies with the Stage 3 noise levels.

Under the legislation, it is permissible for U.S. operators to import a Stage 2 airplane into places outside the contiguous States after November 5, 1990. In order to distinguish these airplanes—which cannot be included in an operator's base level—from those that may be operated in the contiguous States, proposed § 91.805(d) would require that an operator acquiring such an airplane amend its operations specifications to preclude the inadvertent operation of that airplane in the contiguous States. While this provision may seem redundant in the context of the general operating prohibition of the entry and nonaddition rule, the FAA believes that amending the airplane's operations specifications is necessary to prevent the substitution of a prohibited Stage 2 airplane. The legislation is clear that substitution of such an airplane for one already in an operator's base level is not to be allowed.

The only Stage 2 airplanes that may be substituted for those in an operator's base level are those owned by an entity described in proposed § 91.805 (a)(5) or (a)(6) of this section; that is, the airplane must already be included in the pool of Stage 2 airplanes authorized by the nonaddition rule in the legislation.

Section 91.807 Phased Compliance Under Part 121, 125, 129, and 135: Subsonic Airplanes

In addition to setting a final compliance date for the cessation of operation of Stage 2 airplanes in the contiguous States, the legislation directs the FAA to:

> * * * establish a schedule for phased-in compliance with the prohibition (the final compliance date of December 31, 1999). The period of such phase-in shall begin on (November 5, 1990) and end before December 31, 1999. Such regulations shall establish interim compliance dates. Such schedule for phased-in compliance shall be based upon a detailed economic analysis of the impact of the phaseout date for Stage 2 aircraft on competition in the airline industry, including the ability of air carriers to achieve capacity growth consistent with projected rates of growth for the airline industry, the impact of competition within the airline and air cargo industries, the impact on nonhub and small community air service, and the impact on new entry into the airline industry, and on an analysis of the impact of aircraft noise on persons residing near airports.

The FAA recognizes that although the general prohibition in the legislation speaks in terms of airplane operations, a phaseout of actual individual U.S. Stage 2 operations for U.S. air carriers is considered impractical for the FAA to equitably propose, implement, and enforce. A phaseout of actual U.S. operations for U.S. operators also might represent a substantial cost both to the FAA and the affected operators. Instead, the FAA proposes to phase out Stage 2 airplanes operated by U.S. operators. However, since the FAA is unable to control the number of Stage 2 airplanes owned by foreign operators but is able to control the number of operations conducted by them in the contiguous States, the FAA proposes a phaseout of foreign operations under the same compliance schedule proposed for the elimination of U.S. Stage 2 airplanes.

The FAA considered a number of concepts for effecting an orderly and efficient phaseout of Stage 2 airplanes. The two concepts found to be most feasible are discussed below, and the FAA seeks comment on the specific advantages, disadvantages, and burdens that each would impose on affected operators and other interested persons.

The first option proposes a phased compliance schedule under which each operator would be required to meet the specified reduction of its Stage 2 fleet by each interim compliance date. This approach is reflected in the language of proposed § 91.807, and in other proposed sections which govern the phaseout.

The second option is characterized by the issuance of transferable Stage 2 operating rights that expire in increments over the file of the phaseout period. (We note that adoption of this option in the final rule would require corresponding modification to several other sections of the proposed rule.)

Option 1

Under the proposed regulations, each U.S. operator of Stage 2 aircraft would determine its "base level" of airplanes according to a formula that includes those airplanes on its operations specifications on one day during calendar year 1990 and those added pursuant to either of two statutory provisions. Proposed § 91.807 would require each operator to reduce the number of Stage 2 airplanes in its base level under a specified schedule. In developing the proposed interim compliance schedule, the FAA considered the following: possible manufacturing and delivery schedules for Stage 3 airplanes, replacement engines, and hushkits; competition within the air carrier industry; the effect on small airports; the effect on new entrants into the market; projected and potential growth of the carriers; and an analysis of the impact of noise on persons residing near airports. Of particular concern was the relationship between the degree of noise reduction and the relative increase in costs to carriers. Based on the economic analysis, the FAA believes the dates proposed in the schedule optimize the tradeoffs between noise reduction and economic burden to the air carrier industry and the public. These considerations are discussed in detail in the preliminary Regulatory Impact Analysis. Comments addressing the feasibility of the proposed phaseout compliance schedule should include specific economic data for the FAA to consider in formulating a final rule.

Proposed § 91.807(b) would establish the number of Stage 2 airplanes to be included in the "base level" of each operator. For a U.S. operator, the base level would be the number of Stage 2 airplanes listed on its operations specifications for operation in the contiguous States on any one day during calendar year 1990; the base level would also include Stage 2 airplanes acquired under two other limited provisions. A foreign operator's base level would be determined by the total number of Stage 2 operations it conducted into the contiguous States during calendar year 1990. Proposed § 91.807(b) does not address the effect on the base level of an acquiring operator in the event of a merger or other acquisition of an operator's Stage 2 airplanes. The FAA acknowledges that merger-like transactions may occur during the phaseout, in which part or all of the base level of an operator may be combined with the base level of another operator. The FAA specifically solicits comment on how such transactions should be accommodated in the final rule, particularly with regard to the adjustment of the base levels of the operators involved.

Proposed § 91.807(c) would provide a Stage 2 airplane fleet allocation for new entrants into the market that are certificated for operation under FAR part 121 or part 135. The proposal specifies the minimum percentage of a new entrant's airplanes that must be operated as Stage 3 in the contiguous States when service is initiated, based

on the timing of that operator's entry into the market. Paragraph (c)(6) of this proposed section would specify that Stage 3 airplanes with a maximum certificated takeoff weight of less than 75,000 pounds may not be used to meet compliance schedule percentage for new entrants.

Proposed § 91.807(d) would set out the compliance schedule for the reduction of U.S. Stage 2 airplanes. Each operator would be required to reduce the number of Stage 2 airplanes it operates to a level 25 percent below its base level on and after December 31, 1994, to 50 percent below its base level on and after December 31, 1996, and to 75 percent below its base level on and after December 31, 1998.

Proposed § 91.807(d)(2) would allow U.S. operators to acquire and operate additional Stage 2 airplanes from other U.S. operators. These airplanes would not increase the acquiring operator's base level, and would not affect the number of airplanes the operator would be permitted to operate after the next compliance date.

Each foreign air carrier would calculate its required percentage reduction in Stage 2 operations for each compliance date under the schedule provided in proposed § 91.807(d)(4). The reduced number arrived at by this calculation would then represent the maximum number of Stage 2 operations that the foreign air carrier would be permitted to operate in any calendar year until the next compliance date.

Proposed § 91.807(d)(5) would allow a foreign air carrier that had no more than two Stage 2 airplanes listed on its U.S. operations specifications at any time during the period January 1, 1990, through December 31, 1990, to operate that number of Stage 2 airplanes to or from airports in the contiguous States without regard to the compliance schedule in paragraph (d)(3) of this section. This exception is intended to limit the hardship on some small foreign air carriers. Calculating a base level from the total number of 1990 operations might be unfair to small carriers with operations whose frequency varied widely through the year.

The FAA recognizes that certain U.S. operators operate Stage 2 airplanes exclusively outside the contiguous States, and anticipates that these operators will desire to continue operation of these airplanes. The FAA seeks comment from such operators as to the best means by which these airplanes may be identified as ineligible for operation in the contiguous States (e.g., the operations specifications proposed in § 91.805(d)), and the timing of this prohibition. The FAA also seeks comment on whether the decision to continue operation should be considered an exclusion from the base level, or, if the airplanes should be included in the operator's base level and phased out by removing them from operation in the contiguous States. The FAA specifically seeks data from such operators as to the number of Stage 2 airplanes covered under these circumstances and the economic costs and benefits associated with any suggested means of compliance.

Option 2

The FAA is considering an alternative proposal in which the rights to operate Stage 2 airplanes that are reflected in an operator's base level would be freely transferable among operators and other parties. That is, any operator that at any time reduced its Stage 2 fleet below that required by the phaseout schedule could transfer the "unused" base level to another operator. Upon notification to the FAA by both the transferring and receiving operator, the receiving operator would be permitted to have a Stage 2 fleet equal to its required level, plus the number of operating rights transferred from the operator that reduced its fleet below the required level.

The FAA believes that such transferability of operating rights could significantly reduce the overall cost of achieving the phaseout, and make the phaseout generally less burdensome to operators by giving them additional flexibility in achieving compliance. For example, under Option 1, an operator that has airplanes on order that would permit compliance, but that will receive the new aircraft too late to meet an upcoming phaseout deadline might be forced to choose between canceling flights and leasing airplanes until the new airplanes arrive. If operating rights were transferable, such an operator might be able to find another operator that could reduce its Stage 2 fleet below the required level at lower cost. In that case it is possible that the first operator could pay the second for the unused Stage 2 operating rights that the second operator has following its additional reductions.

Option 2 would also mitigate any distortion of operators' economic planning and decisionmaking created by the phaseout requirement. For example, operators typically buy and sell airplanes among themselves; the decision to sell aircraft is based on a conclusion that the airplanes' values on the market exceeds its value to the current owner. A phaseout implemented under Option 1 may well reduce the sales value of Stage 2 airplanes relative to their value to their current owners. This is because the current owner could operate the airplane, subject to the phaseout, but another operator could operate the airplane to a point in the contiguous 48 States only in lieu of another airplane. Thus Option 1 has an undesirable distorting effect on the airplane market that would be eliminated by the transferability allowed under Option 2.

Because transfers of operating rights would be purely voluntary for operators, they would only occur if they made both operators better off. Thus allowing transferability of operating rights creates a "win-win" situation that has the potential to reduce the costs of phaseout compliance to operators. It is FAA policy for its regulations to be cost-effective, meaning that they achieve their intended objectives at the lowest possible cost. To the extent that the desirable features of transferability are not offset by other compelling public policy concerns, transferability would be the preferred option.

The FAA believes that allowing such transferability would not significantly increase the complexity or enforcement costs of the proposed regulation. Indeed, Option 2 might simplify the administration of the phase out in certain circumstances. As noted above, we recognize the need under either option to accommodate mergers, acquisitions, and other corporate restructuring. To do this, operating rights would probably have to be at least partially transferable among operators in a restructuring situation (in connection with the transfer of a substantial portion of an operator's fleet). Since operating rights would generally not be transferable under Option 1, however, implementation of Option 1 might necessitate difficult regulatory distinctions regarding the circumstances under which transfers of operating rights would and would not be allowed. By permitting transfers in general, Option 2 would eliminate this problem entirely.

The FAA believes that such an approach might benefit airlines that have more limited financial resources and thus are potentially most adversely affected by the phaseout requirement. While transferability of the right to operate Stage 2 airplanes would give greater flexibility to individual operators, the FAA would not permit the transfers to delay the overall compliance schedule for phaseout of Stage 2 airplanes.

This option would involve issuing operating rights to each operator for each Stage 2 airplane subject to the

phaseout. Following issuance of these rights, no U.S. operator would be permitted to operate a Stage 2 airplane to or from any point within the contiguous States unless it possessed a Stage 2 operating right for that airplane, in addition to any other required authority.

A portion of each operator's Stage 2 operating rights would expire at each interim compliance date. The expiration schedule would be the same proposed under Option 1. That is, all Stage 2 airplanes would be operable until December 31, 1994, at which point 25 percent of each operator's operating rights would expire. An additional 25 percent would expire on December 31, 1996, and another 25 percent on December 31, 1998. The final 25 percent of the Stage 2 operating rights would expire on December 31, 1999. As with Option 1, this schedule may be altered after review of the comments. Irrespective of the schedule adopted the periodic expiration of portions of the Stage 2 operating authority would ensure corresponding reductions in the national Stage 2 fleet by each expiration date, since each operator would need valid Stage 2 operating rights for each Stage 2 airplane operated within the 48 contiguous States.

Until the expiration date, an operator could use each Stage 2 operating right to operate one Stage 2 airplane. In the event an operator ceased operating a Stage 2 airplane prior to the expiration of its Stage 2 operating right, it could transfer the remaining life of that operating right to operate another Stage 2 airplane. This would enable each operator to determine which of its Stage 2 airplanes to retire or modify first, based on the airplane's age, condition, and other considerations.

Under this approach, an operator also would have the right to transfer unused Stage 2 operating rights to other U.S. operators, and possibly to third parties. This could create an incentive for some operators to move away from the use of Stage 2 airplanes more quickly than would be required by regulation. This approach also recognizes that some operators might have difficulty meeting the interim compliance dates for the industry's overall phaseout of Stage 2 airplanes because of financial, scheduling, or equipment availability problems. If one of these circumstances occurs, an operator could acquire Stage 2 operating rights from another operator. This may provide an operator with additional flexibility in arranging the conversion of its fleet to Stage 3. However, it would not affect compliance with the overall phaseout of Stage 2 airplanes, because Stage 2 certificates would become available only to the extent that some operators eliminate Stage 2 airplanes more quickly than required.

The FAA is particularly interested in receiving public comment on the likely effectiveness of permitting transferability in promoting efficiency and flexibility for operators. The FAA is requesting comments on whether, and to what extent, transferability during the phaseout of Stage 2 airplanes, is preferable to a phase-out in which Stage 2 operating rights are not available from other operators and in which operators would have to make specific Stage 2 fleet reductions at each compliance date.

Option 2 would give operators an unrestricted right to acquire or transfer Stage 2 operating rights but it does not specify the means by which those rights would be represented and recorded. One vehicle for representing Stage 2 operating rights could be certificates, i.e., printed documents, containing an expiration date and the airplanes serial and tail numbers. Under this system, a transfer of the operating right for a Stage 2 airplane would be accomplished through the transfer of the certificates representing those rights. One variant on this approach would be to dispense with certificates. In the absence of certificates, the FAA would maintain a record of the ownership of Stage 2 operating rights, including their dates of expiration. Any operator transferring or acquiring operating rights would then be required to notify the FAA immediately of the transaction.

Comments are requested on the use of these or any other mechanisms under which the right to operate Stage 2 airplanes could be transferred. If it appears from the comments that Option 2, or an approach similar to it, would facilitate airline compliance, particularly among airlines with limited current financial resources, or reduce the costs incurred by such operators, then it is likely that the final rule will incorporate such an approach. If, on the other hand, it appears that an approach involving transferability of operating rights would not provide cost reduction relief or flexibility to comply with the phaseout requirement, it is likely the final rule would not contain such a system.

The FAA notes that adoption of Option 2, especially if it does not involve the use of certificates, would require alteration in the proposed reporting requirements. For example, it would be necessary for the FAA to establish a method under which it would maintain records of operating rights and/or certificates and any transfers, with additional costs to both operators and the FAA. Commenters are invited to make recommendations on this matter. The final rule will also address any changes in the necessary record-keeping requirements.

These are some issues regarding the operation of a system of transferable rights on which the FAA requests the comments of interested parties:

- Should parties other than operators be permitted to acquire unused rights? There might be benefits to permitting nonoperating owners, as well as other parties, to serve as "brokers" who buy and sell operating rights without using themselves. We request comment on this possibility.
- The FAA believes that it will be necessary to impose a minimum time period during which a transferred right cannot be retransferred to a third party, in order to ensure that transferability does not lead to effectively simultaneous operation of multiple Stage 2 airplanes under a single operating right. We request comment on the necessity for an appropriate length of such a minimum period.

Commenters are also invited to address whether a transferable rights system might also be applied to the phaseout of operations within the contiguous States by foreign carriers. The FAA notes that Option 2 contemplates that operating rights would apply to specific Stage 2 airplanes. Any changes would be recorded as a transfer of rights to another Stage 2 airplane. This is intended to simply enforcement and record-keeping for operators and the FAA. However, the phaseout proposal for foreign air carriers would involve eliminating Stage 2 operations rather than eliminating airplanes. Accordingly, any transferrable rights program applicable to foreign air carriers would have to be tailored to take this important difference into account. The FAA's preliminary assessment is that this distinction means that a transferable rights program for foreign air carriers poses enforcement and record-keeping requirements substantially more complex than would be created by a comparable program for U.S. operators. Comments favoring extending a mechanism involving the transfer of operating rights to foreign air carrier operations are therefore requested to make specific recommendations on how these issues would be handled, and the resources that would be needed.

Section 91.809 Waiver

The legislation provides that:

If, by July 1, 1999, at least 85 percent of the aircraft used by an air carrier to provide air transportation comply with the Stage 3 noise levels, such carrier may apply for a waiver of the prohibition set forth in subsection (a) for the remaining 15 or less percent of the aircraft used by the carrier to provide air transportation. Such application must be filed with the Secretary no later than January 1, 1999, and must include a plan with firm orders for making all aircraft used by the air carrier to provide air transportation to comply with such noise levels not later than December 31, 2003.

The legislation goes on to state that:

The Secretary may grant a waiver under this subsection if the Secretary finds that granting such waiver is in the public interest. In making such a finding, the Secretary shall consider the effect of granting such waiver on competition in air carrier industry and on small community air service.

The FAA does not currently foresee granting a large number of waivers under this provision. While not now proposing specific criteria for the issuance of waivers, the FAA might consider granting a waiver if failure to do so would result in, for example, a severe disruption of competition through the serving of a market by a single air carrier or foreign air carrier, a community losing essential air service, or a carrier suffering financial havoc.

There is some concern that a 75% reduction from its base level may force certain operators to have more than 85% of its fleet at Stage 3. Accordingly, the proposed rule includes a provision, § 91.805(d)(3), that exempts carriers that achieve and maintain a fleet composed of at least 85 percent Stage 3 airplanes from the interim compliance schedule. This provision ensures that no carrier will have to exceed the 85 percent level to apply for a waiver. The FAA seeks comment on whether such relief is seen as necessary and appropriate under the circumstances of individual operators.

The legislation also included a limitation to such a waiver:

A waiver granted under this subsection may not permit the operation of Stage 2 aircraft in the United States after December 31, 2003.

These provisions of the legislation have been incorporated in § 91.809 of the proposed rule.

Section 91.811 Annual Progress Report

The legislation requires that:

Beginning with calendar year 1992, each air carrier shall submit to the Secretary an annual report on the progress such carrier is making toward complying with the requirements of this section (including the regulations issued to carry out this section), and the Secretary shall transmit to Congress an annual report on the progress being made toward such compliance.

Proposed § 91.811(c) lists the information that would be required to be submitted by U.S. air carriers to show the airplanes included in the carrier's base level, any additions made to the base level, any Stage 2 airplanes acquired from another U.S. operator, the carrier's progress toward compliance with the interim schedule and final phaseout date, and the carrier's current plan to meet the interim schedule and compliance date. Similar information (except with respect to plans) would be required from a foreign air carrier under proposed § 91.811(d) relevant to its Stage 2 operations to or from the contiguous States.

Comments Received During Development of the NPRM

The FAA received approximately 17 unsolicited comments before the publication of the NPRM regarding the agency's actions under the legislation. These comments were submitted by airport operators, aircraft lessors, citizen groups concerned about noise, air freight operators, and other industry groups.

These unsolicited comments have been placed in Docket No. 26433 to make them available to the public. The content of these comments range from interpretations of the legislation to suggested phaseout dates and implementation schemes.

Among the unsolicited communications described above are requests from aircraft lessors that the FAA act to protect their interests during the phaseout. In particular, they are concerned that focusing the phaseout rule on the operators of aircraft rather than on owners could lead to results they consider inequitable. For the reasons stated below, the FAA believes that operators of Stage 2 airplanes should be responsible for the phaseout of Stage 2 airplanes. The FAA is sensitive to the assertions of airplane lessors regarding the economic importance of any such determination, and the FAA agrees that this is a significant issue. However, for that reason, among others, the FAA believes that the issue should not be resolved solely on the irregular record now before us. The FAA invites all interested persons to submit comments on the appropriate roles and responsibilities for operators and lessors of leased airplanes.

The NPRM proposes to make Stage 2 operators responsible for phasing out their Stage 2 airplanes. This proposal is based on several considerations.

First, the FAA notes that section 9308(a) of the legislation, in requiring the elimination of Stage 2 airplanes, specifically refers to the operation of airplanes rather ownership: "After December 31, 1999, no person may operate to or from an airport in the United States any civil subsonic turbojet aircraft with a maximum weight of more than 75,000 pounds unless such aircraft complies with the Stage 3 noise levels as determined by the Secretary."

Moreover, the FAA is concerned that compliance monitoring would be considerably more difficult if owners rather than operators were responsible for the phaseout. Airplane ownership is often the subject of highly complex financial arrangements, frequently involving individuals or corporations with which the FAA has little or no regular contract and over which the FAA has limited direct authority. Keeping track of the various owners and interests and ensuring that they are complying with the phaseout program may be substantially more difficult than monitoring compliance by airplane operators; these operators are, of course, at airports, and thus readily accessible to FAA inspectors.

The problem is further compounded by the fact that many airplane owners are investors whose proportional ownership interest is less than one whole airplane. The concept of a phased reduction in the percentage of an owner's Stage 2 airplanes has little meaning for owners with fewer than two airplanes. The FAA does not have data currently available about the number of airplanes that might be exempt from interim phaseout dates because their owners have fractional ownership interests. If that number is substantial, however, it could reduce the noise benefits that would otherwise be generated by the interim phaseout dates.

If the final rule in this proceeding presents too many compliance problems, local airport operators might not accept it as a credible national response to the problem of Stage 2 noise. In that event, there would undoubtedly be increased pressure in many communities for local Stage 2 restrictions. Local airport operators, however, can exert control only over airplane operators.

None of these problems is necessarily insurmountable. Taken together, however, they are sufficient to persuade the FAA that it should propose to base the Stage 2 phaseout on operations rather than ownership. However, the FAA remains open to consideration of other methods of phaseout that would be consistent with statutory obligations, and the final rule may adopt an owner-based approach if it appears superior.

Owners of aircraft are invited to comment both on the need for an desirability of an owner-based approach, and on any adjustments or accommodations that should be made to protect the interests of owners, in the event that the FAA adopts an operator-based rule.

Economic Summary

This section summarized the regulatory impact analysis prepared by the FAA on the proposed amendments to 14 CFR part 91, Subpart I—Operating Noise Limits. This summary and the full regulatory impact analysis quantify, to the extent practicable, estimated costs to the private sector, consumers, and federal, State and local governments, as well as anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. This determination is normally made on the basis of a regulatory evaluation or regulatory impact analysis. However, by enacting the Airport Noise and Capacity Act of 1990 which mandates that the FAA promulgate regulations, Congress has in effect already determined that the phaseout of Stage 2 airplanes by the end of 1999 is in the public interest; that is, the collective public benefits of the phaseout outweigh its costs to the public. Nevertheless, the FAA has prepared a regulatory impact analysis of the proposed rule. The purpose of the analysis is to estimate potential costs and benefits (either qualitatively or quantitatively) to promote a better understanding of the impact of the proposed rule.

Executive Order 12291 requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that: Has an annual effect on the economy of $100 million or more; creates a major increase in costs or prices for consumers, individuals, industries, Federal, State, or local government agencies, or geographic regions; or has a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. The Executive Order requires that alternative actions be considered and evaluated for major rules.

In addition to a summary of the regulatory analysis, this section also contains various alternatives for accomplishing the phaseout, a regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96–354), and an international trade impact assessment. Detailed economic information supporting this NPRM is contained in the Regulatory Impact Analysis, available in the docket.

Examination of Alternative Approaches

The discussion below reviews alternative strategies and timetables (within the limits allowed by Congress) that were considered in this proceeding. The FAA considered four alternatives for conducting the phaseout of Stage 2 airplane operations to or from airports in the contiguous United States by December 31, 1999. One alternative would accomplish the Stage 2 airplane phaseout using an industry fleet measure. The second would accomplish the phaseout based on a required percentage reduction of each operator's Stage 2 fleet for different compliance dates during the 1990s. The third would allow the Stage 2 fleet phaseout objectives to be accomplished through the addition of Stage 3 airplanes rather than solely through the reduction of Stage 2 airplanes. The fourth alternative would allow Stage 2 operating right to be transferred among operators.

A detailed discussion of the four alternatives is presented below.

Alternative One

This alternative would set interim Stage 2 phaseout goals for the whole industry rather than for individual operators. Operators could work together to achieve each interim compliance date. Because no individual operator would be responsible for a specific portion of the progress of the phaseout, this alternative would be difficult to enforce. No operator would have any incentive to proceed more rapidly than others to phase out Stage 2 airplanes, because additional costs would result from a faster phaseout schedule. Competition within the industry makes it unlikely that operators would effectively cooperate to produce a largely self-regulated phaseout.

Alternative Two

This alternative, which is incorporated in the proposed rule text, would require each operator to reduce a specific percentage of its Stage 2 airplanes at different compliance dates during the 1990s. This alternative is more readily enforceable than Alternative One, because each operator would be responsible for meeting a specific goal. By requiring each operator to reduce its fleet by the same percentage as other operators at each compliance date, Alternative Two would require all operators to bear some of the burden.

Alternative Three

This alternative would allow operators to meet interim goals through increases in Stage 3 airplanes (thereby reducing the percentage of the operations of Stage 2 airplanes) as well as reductions in Stage 2 airplanes. The phaseout goals would set Stage 2 fleet reductions as a percentage of the operator's total fleet. This alternative would favor an operator that is expanding by adding Stage 3 airplanes to its fleet. This alternative could also means higher noise levels during the phaseout period because the absolute number of Stage 2 airplanes could be higher than under Alternatives One or Two.

Alternative Four

This alternative, which is fully explained elsewhere in this preamble, would propose an approach involving transferability of operating rights for Stage 2 airplanes. Under this alternative, operators would be allocated operating rights to use Stage 2 airplanes for a specified period and such rights could be transferred or sold to others. Compared to other alternatives, this approach could make it more flexible for individual operators to phase out their Stage 2 airplanes. In particular, the FAA believes that such an approach might benefit airlines that have more limited financial resources and thus would be potentially more adversely affected by the proposed phaseout requirement. This approach also might increase operator flexibility during the phaseout by allowing operators that are unable to keep up with the phaseout schedule to buy operating rights from airlines that are able to exceed the schedule.

The FAA is considering Alternatives Two and Four for the final rule. These are viewed as more enforceable than Alternative One, because each operator has the responsibility of meeting a specific goal. Alternatives Two and Four are preferred to Alternative Three, because they give no advantage to operators expanding their fleets, and they also achieve more rapid noise reductions. This NPRM incorporates Alternative Two, because the novelty of Alternative Four raises many questions on which we would like to receive comment before drafting the regulatory language. As noted above, however, to the extent that the desirable features of transferability are not offset by other

compelling public policy concerns, transferability would be the preferred option. The FAA would not, however, permit the transferability of operating rights to adversely affect the overall national reduction in Stage 2 airplanes.

To implement Alternative Two, the FAA evaluated five different compliance schedules. Although the analysis of compliance schedules performed here is directed specifically at Alternative Two, the scheduled rate of elimination of Stage 2 airplanes would be the same if Alternative Four were adopted in the final rule. To measure the cost of these compliance schedules, a baseline cost (the lowest cost of having all Stage 2 airplanes phased out by December 31, 1999) to the industry was determined using the natural attrition of Stage 2 airplanes (assuming a 25-year useful life span). Airplanes that would not have reached 25 years of age at the end of the phaseout period would have to be replaced or converted to Stage 3 airplanes, and the loss of economic utility from these younger airplanes represents the baseline cost of early replacement or conversion to Stage 3. This baseline cost is also the cost of the law requiring the ban of Stage 2 airplane operations after December 31, 1999. However, Congress has mandated phased compliance. In selecting the proposed schedule of interim dates to phase out Stage 2 airplanes, the FAA considered the following: Costs to the industry, technological availability of Stage 3 airplanes, and the need to accomplish the Stage 2 phaseout by the end of 1999. An economic analysis of several alternative compliance schedules was performed. Compliance schedule one would require a total phaseout in 20 percent increments from December 31, 1995 through December 31, 1999. Compliance schedule two would require a 50 percent phaseout by the end of 1993, 75 percent by the end of 1996, and the remainder by the end of 1999. Compliance schedule three would phase out 50 percent by the end of 1994, 75 percent by the end of 1997, and the remainder by the end of 1999. Compliance schedule four would phase out 50 percent by the end of 1996, 75 percent by the end of 1998 and the remainder by the end of 1999. Compliance schedule five would phase out 25 percent by the end of 1994, 50 percent by the end of 1996, 75 percent by the end of 1998, and the remainder by the end of 1999.

Costs

Sections 9308 and 9309 of the Airport Noise and Capacity Act of 1990 require the elimination of Stage 2 airplanes by December 31, 1999 in the contiguous 48 States. Many of the costs associated with this proposed rule are directly attributable to the statute because Congress determined that the elimination of Stage 2 airplane noise by the end of 1999 is in the public interest. Those costs that are directly attributable to the legislation will be so identified. The legislation also requires the FAA to establish interim compliance dates for the phaseout. The additional costs of phasing out Stage 2 airplanes would be the result of FAA policy decisions and will be identified as costs of the proposed rule.

The phaseout of Stage 2 airplanes will impose certain costs on many operators. Among the direct costs are the purchase of Stage 3 airplanes, the replacement of engines on Stage 2 airplanes, or the purchase and installation of hushkits on Stage 2 airplanes. Another cost to the aviation industry is the loss in market value of Stage 2 airplanes as a result of early retirement forced by the phaseout. In addition to the costs of the phaseout schedule itself, administrative costs are anticipated for the FAA and industry. The cost of the legislation (the prohibition of all Stage 2 airplane operations within the 48 contiguous States after December 31, 1999) is estimated to be $4.4 billion. The industry is expected to pass a considerable portion of these costs on to travelers and shippers.

To the extent that using hushkits and replacement engines is less costly (when all costs of operation are concluded) than replacing existing Stage 2 airplanes with Stage 3 airplanes, the FAA believes that the total compliance costs associated with the legislation will be less than that stated above. The FAA requests information on the likelihood of using hushkits and replacement engines to comply with the legislation and proposed rule.

The FAA has calculated from public information the cost to the U.S. air carrier industry for the above five compliance schedules. All five schedules are based on a nationwide Stage 2 phaseout by December 31, 1999. For this analysis, a useful life of 25 years was assumed for all Stage 2 airplanes.

Baseline	Industry-wide cost
Total elimination of Stage 2 fleet. One-time phaseout by December 31, 1999.	$4,442 million.
Compliance schedule one:	
20 percent annual phaseout each year beginning December 31, 1995 and continuing until December 31, 1999.	Second most costly.
Compliance schedule two:	
50 percent by December 31, 1993, 75 percent by December 31, 1996, and 100 percent by December 31, 1999.	Most costly.
Compliance schedule three:	
50 percent by December 31, 1994, 75 percent by December 31, 1997, and 100 percent by December 31, 1999.	Third most costly.
Compliance schedule four:	
50 percent by December 31, 1996, 75 percent by December 31, 1998, and 100 percent by December 31, 1999.	$1,186 million (least costly).
Compliance schedule five:	
25 percent by December 31, 1994, 50 percent by December 31, 1996, 75 percent by December 31, 1998, and 100 percent by December 31, 1999.	$1,330 million (second least costly.

The impact on individual operators would vary depending on the size of an individual operator's Stage 2 fleet. Accordingly, the FAA has examined the size of the Stage 2 fleet by operator in order to analyze these costs. The operators affected the most by the phaseout and ban would be those that: (1) Have a large number of Stage 2 airplanes; (2) have a relatively young Stage 2 fleet; or (3) have difficulty in obtaining the necessary financing for replacement airplanes, engines, or hushkits. The effect on cargo operators would be minimal when the assumption of a 25-year useful life for all airplanes is applied. Only one cargo operator would be significantly affected because it owns a relatively young Stage 2 fleet. The FAA believes that the cargo operators would generally purchase hushkits rather than purchase new Stage 3 airplanes.

In addition to the cost of the phaseout schedule, proposed § 91.811 would require that beginning in calendar year 1992, each U.S. operator and foreign air carrier affected by this proposed rule must submit to the Administrator an annual report on the progress such carrier has made toward complying with the proposed requirements. The FAA estimated that the net present value for all air carrier costs of annual progress reports will be $21,400. The FAA also estimated that the net present value of FAA costs to review annual progress reports and monitor the program will be $441,700.

Benefits

The principal benefit of the proposed regulations is the reduction in the number of people living in the 65 dB DNL contours around the nation's airports. In 1990, an estimated 2.7

million individuals were within the DNL 65 dB contour. Simply by normal attrition of Stage 2 airplanes, this number would drop to 1.3 million by the year 2000. The eventual ban on Stage 2 airplanes mandated by the legislation would reduce this number by 900,000; these noise reduction benefits would be experienced sooner under the proposed compliance schedule than under the legislation alone.

The proposed rule should reduce the noise impact that has caused a patchwork of Stage 2 noise regulations to be promulgated by local governments at over 400 U.S. airports. While difficult to quantify, numerous segments of the industry have alleged serious economic harm from dealing with such restrictions. This proposed rule is expected to result in improved efficiencies to both air carriers and the flying public. Public comment on this issue is solicited.

Many studies have shown that high levels of airplane noise may have an adverse effect on the health of individuals. A number of these studies have been reviewed in the economic impact analysis. At this time no quantitative risk assessment exists upon which to calculate the quantitative health benefits. The FAA requests any information that quantifies the economic health benefits associated with this proposed rule.

As a general rule, noise levels are inversely correlated with residential property values. That is, as airplane noise levels decrease, property values around airports increase. To quantify the economic impact associated with the decrease in residential property values, the FAA has used a case study approach to provide a benchmark comparison of the expected benefits of rulemaking actions over an extended period of time. Based on a review of several studies on the change in property values as they relate to airplane noise, studies conclude that property values increase one-half of one percent for every decibel decrease in day-night sound level (DNL). Using the conclusion of these reports, the FAA calculated that inside the 65 dB DNL contours that the net present value of the quantitative benefits associated with the legislation for reducing noise to the population affected by a DNL of 65 dB or higher would be $508 million. For the first three compliance schedules, the FAA evaluated the incremental noise-reduction benefits to be $42.4 million under compliance schedule one, $109.2 million under compliance schedule two, and $61.6 million for compliance schedule three. For compliance schedules four and five, the increased benefits are presented in the following table.

The numbers represent the residential populations affected around most of the nation's airports that receive jet service, the change in day-night sound level (in dB), and the dollar benefits for each of the following years:

ESTIMATED BENEFITS RESULTING FROM AN INCREASE IN RESIDENTIAL PROPERTY VALUES FOR COMPLIANCE SCHEDULES FOUR AND FIVE, 1990.[1]

Year	Schedule Four [2]			Schedule Five [3]		
	Cumulative number of individuals benefiting as a result of FAA rule	Cumulative reduction in airport noise as a result of FAA rule —dB—	Net present value change in property value	Cumulative number of individuals affected as a result of FAA rule	Cumulative reduction in airport noise as a result of FAA rule —dB—	Net present value change in property value
1994				0	−.10	$0
1995				200,000	−.50	1,180,992
1996	300,000	−0.60	$2,576,711	300,000	−.80	2,576,711
1997	300,000	−1.40	4,099,311	300,000	−1.40	4,099,311
1998	500,000	−2.10	9,316,611	500,000	−2.10	9,316,611
1999	700,000	−4.90 [4]	27,667,560	700,000	− [4]4.90	27,667,560
Total			43,660,193			44,841,185

[1] Benefits are calculated for people impacted within the 65 dB DNL Contour.
[2] Schedule 4 is a 50 percent phaseout by the end of 1996 and a 75 percent phaseout by the end of 1998.
[3] Schedule 5 is a 25 percent phaseout by the end of 1994, a 50 percent phaseout by the end of 1996 and a 75 percent phaseout by the end of 1998.
[4] Noise reduction benefits would be experienced sooner under the proposed compliance schedules that under the legislation alone. After December 31, 1999, noise will be reduced by an average of DNL 7.7 dB to 900,000 individuals.

Source: Derived from information provided by U.S. Department of Transportation, Federal Aviation Administration, Office of Energy and Environment, December 1990.

These estimates represent only a portion of the benefits, because such variables as the effect of airplane noise on commercial properties and on occupational injuries have not been included. Again, the FAA seeks comment from interested parties on this subject.

Competitive Impact Analysis

This section analyzes the impact of interim compliance dates (based on Alternative Two and compliance schedules four and five) for the phaseout of Stage 2 airplanes on competition in the airline industry. The following is a discussion of the competitive impact of this proposed rule.

The Financial Health of the U.S. Airline Industry

Of the nine major U.S. carriers, five are profitable (three have operating profits of more than $150 million each and two have operating profits of more than $25 million each). The remaining U.S. carriers reported operating losses of more than $80 million each. Of the 12 national carriers, 9 are profitable (four with operating profits of more than $17 million each and five with operating profits of at least $2 million each). The three remaining national carriers were not profitable (with operating losses in excess of $50 million). Part of this assessment is based on financial information contained in the FAA Report entitled, Quarterly Industry Overview: Fiscal Year 1990, December 1990, Office of Aviation Policy and Plans.

Among the major U.S. operators, the proposed rule under compliance schedule four is expected to impose the following costs between 1996 and 2000:

PRESENT VALUE OF COSTS [1] 1990 DOLLARS

[In millions]

U.S. air carriers	1996	1998	2000	Total
Majors				
American	32	134	176	342
Continental	39	48	135	223
Delta	292	343	493	1128
Eastern	0	139	159	298
Federal Exp.	80	82	70	232
Northwest	0	167	199	366
Pan American	0		67	
Trans World	0	5	106	111
United	94	241	230	565
USAir	141	418	548	1,107
Subtotal	$678	$1,577	$2,183	$4,439
Nationals				
Air Wisconsin	0			
Alaska Airlines	88	63	49	200
Aloha	30	25	32	87
Am. Trans. Air	0			
America West	68	72	66	207
Evergreen Intl.	0			0
Hawaiian	30	13	10	53
Horizon Air	0	0	0	0
Midway Airlines	0	0	89	89
Southern A.T.	0	0	0	0
Tower Air	0	0	0	0
Trump Shuttle	0	0	0	0
United Parcel	0	0	30	30
World Airways	0	0	0	0
Southwest Airl.	157	85	88	330
Subtotal	$373	$258	$364	$996
Grand Total	$1,051	$1,835	$2,547	$5,435

[1] Totals may not add due to rounding. It is likely that the costs associated with Alaska, Aloha, and Hawaiian Airlines will be less because many of their operations are outside the contiguous 48 States.

Among the major U.S. operators, the proposed rule under compliance schedule five is expected to impose the following costs between 1994 and 2000:

PRESENT VALUE OF COSTS [1] 1990 DOLLARS

[In millions]

Air Carrier	1994	1996	1998	2000	Total
Majors					
American	12	32	134	176	354
Continental	0	39	48	135	223
Delta	153	283	300	493	1,208
Eastern	0	0	139	159	298
Federal Exp.	48	48	82	70	248
Northwest	0	5	167	199	371
Pan American	0	0	0	67	67
Trans World	0	0	5	106	111
United	0	94	241	230	565
USAir	0	141	418	548	1,107
Subtotal	$213	$822	$1,534	$2,183	$4,552
Nationals					
Air Wisconsin	0	0	0	0	0
Alaska Airlines	36	60	63	49	207
Aloha	3	30	25	32	90
Am. Trans. Air	0	0	0	0	0
America West	2	68	72	66	208
Evergreen Intl.	0	0	0	0	0
Hawaiian	18	16	13	10	57
Horizon Air	0	0	0	0	0
Midway Airlines	0	0	0	89	89
Southern A.T.	0	0	0	0	0
Tower Air	0	0	0	0	0
Trump Shuttle	0	0	0	0	0
United Parcel	0	0	0	30	30
World Airways	0	0	0	0	0

PRESENT VALUE OF COSTS [1] 1990 DOLLARS—Continued

[In millions]

Air Carrier	1994	1996	1998	2000	Total
Southwest Airl	84	89	85	89	347
Subtotal	$143	$263	$258	$364	$1,028
Grand Total	$356	$885	$1,792	$2,547	$5,580

[1] Totals may not add due to rounding. It is likely that the costs associated with Alaska, Aloha, and Hawaiian Airlines will be less because many of their operations are outside the contiguous 48 States.

Based on this information, it is clear that the proposed rule would have a significant effect on many air carriers in the U.S. airline industry. The worsening financial condition of some air carriers will obviously affect the achievement of projected rates of growth for the airline industry. Many airlines, including some financially strong ones, may have to divert funds from capacity expansion to the replacement of State 2 airplanes earlier than planned.

Overview of Competitive Impact

A reduction in the number of airlines offering scheduled passenger service probably will not reduce price and service competition within the industry. In February, 1990, a Department of Transportation task force released a comprehensive assessment of the state of airline competition that was initiated at the direction of Secretary of Transportation Samuel Skinner. This study, entitled Secretary's Task Force on Competition in the U.S. Domestic Airline Industry, U.S. Department of Transportation, Office of the Secretary of Transportation, Volumes I–XI, February 1990, concluded that the domestic airline industry is more competitive than ever before. The study also showed that the increase in national concentration has not resulted in a reduction in competitive pressures in city-pair markets, but, rather, has actually resulted in more competition as individual carriers expanded their systems from a regional to a national basis. It demonstrated how concentration at an airport actually intensifies competition in the hundreds of markets that can be served. Finally, the study showed that fare premiums at concentrated hubs tend to be limited to short-haul, high-density markets that affect less than five percent of the system traffic. The Department's study, however, confirmed that the industry was consolidating at the national level, that concentration had increased at many airports, and that passengers in certain markets at concentrated hub airports were paying fare premiums.

The hub-and-spoke system of service has lead to the geographical expansion of most carriers and the resulting increase in city-pair competition. In other words, connecting services created by airport hubs allow more competitors than would be possible with linear-type systems of service. This is particularly true for small traffic-generating points, and is the reason that smaller points have been the prime beneficiaries of deregulation.

The basic issue is whether the forced early retirement of Stage 2 airplanes would cause a reduction in competition. Of course, the answer depends on the number of carriers affected and the extent to which they are affected. Any change in relative fleet sizes would affect industry concentration. The Department's study shows, however, that this does not necessarily affect competition. The national hub-and-spoke systems have enabled a relatively small number of carriers to provide more intense competitve service in most city-pair markets. On a city-pair basis, it does not take a large number of carriers to provide very competitive service. This strongly suggests that some loss of capacity by financially weak carriers or the loss of a financially weaker carrier would not necessarily have any lasting impact on competition at the city-pair level.

Achieving Projected Rates of Growth for the Airline Industry

The State 2 ban and the proposed phaseout rule, however, could have an impact on many air carriers' plans to expand their fleets. Many air carriers do not plan to replace or convert their State 2 airplanes as soon as would be required under the proposed rule. Some of these airlines may not have the financial strength both to increase their fleets and to replace many of their State 2 airplanes early. The State 2 ban and the proposed phaseout rule, as a result, might reduce the growth rate of the U.S. airline industry.

The Impact on Competition Within the Air Passenger and Air Cargo Industries

The FAA has already discussed competition within the air passenger industry in other sections of this summary. Competition within the air cargo industry, however, is not expected to change significantly over the next ten years. FAA data show that the age of many cargo carriers airplanes is greater than that of air passenger carriers. Consequently, many of these airplanes would be replaced during the 1990's (assuming a 25-year life for State 2 airplanes) and, therefore their replacement would not be considered a cost of this rule. The airplanes that would be replaced as a consequence of this rule are not expected to adversely affect competition within the air cargo industry.

The finding is based on the assumption that airplanes have a useful life of only 25 years. Although many air cargo operators plan to use their airplanes well beyond 25 years, the FAA still believes that its 25-year assumption is valid. The FAA is currently issuing Airworthiness Directives and writing new regulations that will greatly increase the cost of operating old airplanes and the air cargo industry is not exempt from these AD's. As a result, air cargo operators may find it uneconomical to operate airplanes more than 25 years old.

The proposed rule is not expected to have a significant impact on competition between the airline and air cargo industries because the proposed rule would not change the manner by which these two industries compete for carriage of cargo commodities. There would still be a sufficient number of operators to maintain a competitive market structure. Based on information in the earlier subsection on the financial health of the U.S. airline industry, there will probably be four or more major carriers in the U.S. airline industry over the next 10 years. The number of cargo operators is not expected to change significantly over the next ten years. This evaluation concludes that

competition between the airline and air cargo industries would remain intact after implementation of the proposed rule.

The Impact on Nonhub and Small Community Air Service

The proposed rule, which presents a schedule for the phaseout of Stage 2 airplanes, is expected to have little or no effect on nonhub and small communities for two reasons. First, a large proportion of the service provided to such communities is provided with commuter airplanes, most of which have a maximum certificated takeoff weight of less than 75,000 pounds and would not be subject to the phaseout requirement. Of the 374 nonhub communities, only 66 are now served with as many as two roundtrips a day, six days per week, by Stage 2 airplanes with a gross weight of more than 75,000 pounds that would be subject to the phaseout requirement. These 66 communities are served primarily with smaller airplanes that would not be subject to the proposed rule. These 66 communities had approximately 600,000 departures, and only one out of every five departures was provided with a Stage 2 airplane subject to the proposed rule.

The second reason for the negligible effect is that many of these communities receive service to several alternative hubs by different operators. Because a majority of traffic from small communities moves beyond the various connecting hubs, a decrease in service at any given hub would generally not affect a large number of local passengers traveling to cities served by that hub. For example, Akron, Ohio, which is a nonhub city, receives service to seven different connecting hub complexes by six different U.S. carriers. In the event that any one of these U.S. carriers discontinued service to Akron, the remaining operators would be expected to continue to compete vigorously for most connecting passengers.

The hub-and-spoke system of service enables operators to compete for very small volumes of traffic. This is the principal reason that smaller communities have been the prime beneficiaries of deregulation. This is also the reason why these communities will continue to receive very competitive service even if additional concentration occurs at the national level. To illustrate, again using Akron as an example, most city-pair markets involving Akron have very small traffic volumes. Nevertheless, as many as six U.S. carriers compete for this traffic through their respective hubs. Thus, the proposed rule is expected to have a negligible impact on this component of the industry.

The Impact on New Entry into the Airline Industry

Many factors affect new entry into the airline industry. These factors include the cost of airplanes, availability of passenger gates, gaining priority listing on reservation systems, operating and maintenance costs (e.g., labor and fuel), and financing. The added cost of purchasing Stage 3 airplanes instead of Stage 2 airplanes will obviously increase the costs of entry into the airline industry. The FAA believes, however, that the added costs of the Stage 2 phaseout regulations will be a small percentage of the total cost of entry.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities." The small entities that would be affected by this proposed rule are the owners of Stage 2 civil subsonic airplanes with maximum weights of more than 75,000 pounds that operate in the contiguous States.

There are about 115 U.S. airlines and private operators that operate more than 4,000 jet airplanes over 75,000 pounds. Fleet sizes range from one to several hundred. Many of the fleets and many of the airplanes in these fleets are Stage 3 and are not affected by the proposed rule. Others are Stage 2 airplanes that have been converted to Stage 3. In addition, many airplanes are operated, but not owned, by the carriers under whose names they fly. These leased airplanes are owned by other air carriers, banks, insurance companies, and leasing companies. Finally, many operators own only one Stage 2 airplane; they would be excluded from compliance with the phaseout because of a round-up provison for calculations in the phaseout schedule.

The FAA's Order on Regulatory Flexibility Criteria and Guidance[1] size threshold for a small operator is: "9 aircraft owned, but not necessarily operated." The Order also defines a substantial number of small entities as a number that is not less than eleven and that is more than one-third of the small entities subject to the rule.

The FAA has identified 12 air carriers (five "nationals" and seven "regionals") that own fewer than nine Stage 2 airplanes. These carriers own a total of 37 Stage 2 airplanes. Four carriers own one Stage 2 airplane each. Through rounding of calculations the proposed rule would allow these carriers to operate those airplanes through December 31, 1999. Only eight of these small air carriers would be required to phase out Stage 2 airplanes to comply with the schedule in the proposed rule.

Most private operators own only one jet airplane, and would be thus exempt from the phaseout schedule. Of the six operators that own more than one airplane, one owns two DC–8's that have been hushkitted to Stage 3. The other five are large companies with tens of millions of dollars in sales and hundreds of employees.

Therefore, the proposed rule would not affect a substantial number of small air carrier entities as defined in the FAA's Regulatory Flexibility Criteria and Guidance.

Other small entities that could be affected by the proposed rule are the lessors who do not operate the aircraft they own. The FAA has been unable to obtain information on the identity of these lessors or the number and types of aircraft that they lease. The FAA solicits this information in order to determine whether a substantial number of them would be significantly affected by the proposed rule.

International Trade Impact

The proposed rule is expected to have little or no impact on trade opportunities of United States firms conducting business overseas or for foreign firms conducting business in the United States. The proposed rule would impose similar requirements on both domestic air carriers under FAR part 121 and on foreign air carriers subject to FAR part 129. The cost of compliance to foreign air carriers for phasing out Stage 2 operations into the United States under part 129 would probably be similar to the cost incurred by U.S. operators. In addition, other countries are also phasing out Stage 2 airplanes. Therefore, it would not cause a competitive fare disadvantage for U.S. air carriers operating between the contiguous states and overseas or for foreign air carriers operating between the contiguous States and overseas.

[1] U.S. Department of Transportation, Federal Aviation Administration. Regulatory Flexibility Criteria and Guidance. Order No. 2100.14A. September 16, 1986.

Environmental Analysis

The proposed rule is in response to section 9308 of the Airport Noise and Capacity Act of 1990. This secton of the Act directs the Secretary of Transportation to promulgate final rules for the phaseout of Stage 2 airplane operations by July 1, 1991. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, requires all federal agencies "to the fullest extent possible" to include in "major Federal actions significantly affecting the quality of the human environment" an environmental impact statement analyzing the consequences of, and alternatives to, the proposed action. Since the proposed regulation is a federal action subject to NEPA, the FAA will determine its potential impacts by preparing an environmental assessment (EA). Under applicable guidelines of the President's Council on Environmental Quality and agency procedures implementing NEPA, absent extraordinary circumstances, the FAA normally prepares an environmental assessment to determine the potential impacts of a proposed regulation that may affect the human environment. 40 CFR 1501.3, FAA Order 1050.1D, appendix 7, par. 3(a).

For the reasons explained below, the FAA's preliminary analysis supports the preparation of an EA and suggests that an EIS will not be required. The 1990 Act appears to only afford the Secretary discretion to set the interim dates for phaseout; the percentages to require on these dates; and the method of implementation. Given these limitations, any decision made in promulgating the mandated regulations is unlikely to have a significant impact on the quality of the human environment.

At the close of the period for public comments, the FAA will review the EA and comments to determine whether to issue a finding of no significant impact or an environmental impact statement (EIS). If the FAA concludes from the EA that an EIS is required, the FAA will then address how to integrate its NEPA responsibilities with its statutory obligations under the 1990 Act. If an EIS is required, it may be that the FAA may not be able to complete an EIS and simultaneously adopt final regulations within the 180-day time from mandated by the Act. We invite suggestions and comments on our options.

The legislation sets a final compliance date of December 31, 1999, for the cessation of operations of Stage 2 airplanes in the contiguous United States. The legislation provides for a waiver of this final compliance date only under strict circumstances and to a limited number of operators, sets a strict limitation on the life of the waiver, and defines those issues the Secretary must consider in granting the waiver. By these actions, the Congress has effectively determined the improvement in noise levels that will result from the legislation before granting any discretion to the Secretary.

In addition, the legislation places significant restriction on the importation and operation of additional Stage 2 airplanes after November 5, 1990. The legislation strictly defines who may import such airplanes, and the time at which they must be brought back into the United States in order to operate. The only exemption allowed under the legislation is for airplanes that must be operated in order to obtain modification to Stage 3 noise levels.

The proposed rule sets forth a schedule that would require a U.S. operator to phase out 25% of its base level of Stage 2 airplanes by December 31, 1994, 50% by December 31, 1996, and 75% by December 31, 1998. The FAA believes that this proposed phaseout schedule optimizes the tradeoffs between noise reduction for communities surrounding airports and the economic burden on operators that it was required to consider.

Other phaseout options were considered by the FAA, one of which is explained in this NPRM as an alternative to the proposed rule. That alternative includes the use of transferrable operating rights but does not alter the concept of a compliance schedule. Another alternative considered included a compliance schedule based on the percentage of an operator's fleet that had to be Stage 3 on a given interim date, rather than a reduction in an actual number of Stage 2 airplanes. Because Congress mandated interim phaseout dates, the only choice became the dates in the compliance schedule and the method of implementation.

Within this framework, the FAA believes that among the alternatives discussed, there is no significant range of environmental impacts from which to choose; all of the alternatives considered to be within the FAA's discretion are unlikely to have a potentially significant impact on the quality of the human environment. Moreover, the FAA believes that any environmental impact that these regulations may have will be positive by reducing the amount of noise from Stage 2 airplanes. The discretion given to the Secretary as to how soon those positive benefits accrue is strictly limited by the matters the agency is directed to consider under the legislation.

Considering these factors, the FAA believes it has done the best possible job of not significantly affecting the quality of the human environment. The FAA seeks public comment on this issue, and will, on that basis, determine the potential significant environmental impacts of the proposed phaseout schedule.

Paperwork Reduction Act

Information collection requirements in the proposed amendment to § 91.811 will be submitted to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Comments on the requirements should be submitted to the Office of Information and Regulatory Affairs, New Executive Office Building, room 3001, Washington, DC 20503, Attention: FAA Desk Officer (telephone: (202) 395–7340). A copy should be submitted to the FAA docket.

Federalism Implications

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

Conclusion

For the reasons discussed throughout this preamble, and based on the findings in the Regulatory Impact Analysis and the International Trade Impact Analysis, the FAA has determined that this proposed rule would be a major rule under Executive Order 12291. In addition, in consideration of the cost information discussed under the Regulatory Flexibility Determination, it is certified that this amendment to part 91, if adopted, would not have a significant economic impact on a substantial number of small entities in the air carrier industry. This proposed rule is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). A regulatory impact analysis of this proposed rule, including an initial Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 91

Air carriers, Aviation safety, Safety, Aircraft, Airspace, Air transportation.

The proposed amendment

Accordingly, the FAA proposes to amend 14 CFR part 91 of the Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 is revised to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; 49 U.S.C. App. 2157, 2158; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514, 3 CFR, 1966–1970 Comp., p. 902; 49 U.S.C. 106(g).

2. Section 91.801 is revised to read as follows:

§ 91.801 Applicability: Relation to part 36.

(a) This subpart prescribes operating noise limits and related requirements for the operation of civil airplanes in the United States. This subpart applies to operations to or from any airport in the United States conducted under this part and parts 121, 125, 129, or 135 of this chapter. Sections 91.803, 91.805, 91.807, 91.809, and 91.811 apply to any civil subsonic turbojet airplane with a maximum certificated takeoff weight of more than 75,000 pounds and if—

(1) U.S.-registered, that has a standard airworthiness certificate; or

(2) Foreign-registered, that would be required by this chapter to have a U.S. standard airworthiness certificate in order to conduct the operations intended for the airplane were it registered in the United States. Those sections apply to operations to or from airports in the United States under this part and parts 121, 125, 129, or 135 of this chapter.

(b) Unless otherwise specified, as used in this subpart, "part 36 of this chapter" refers to 14 CFR part 36, including the noise levels under Appendix C of that part. For purposes of this subpart, the various stages of noise levels, the terms used to describe airplanes with respect to those levels, and the terms "subsonic airplane" and "supersonic airplane" have the meaning specified under 14 CFR part 36.

(c) For purposes of this subpart, for any subsonic airplane operated in foreign air commerce in the United States, the Administrator may accept compliance with the noise requirements specified under annex 16 of the International Civil Aviation Organization when those requirements have been shown to be substantially compatible with, and achieve results equivalent to those achievable under 14 CFR part 36, as if those noise levels were 14 CFR part 36 noise levels.

2A. Section 91.803 is revised to read as follows:

§ 91.803 Final compliance: civil subsonic airplanes.

(a) No person may operate to or from an airport in the United States or the District of Columbia any civil subsonic airplane covered by this subpart unless that airplane has been shown to comply with the Stage 2 or Stage 3 noise levels under part 36 of this chapter.

(b) Except as provided in § 91.809, on or after January 1, 2000, no person shall operate to or from any airport in the 48 contiguous United States or the District of Columbia any civil subsonic airplane covered by this subpart unless that airplane has been shown to comply with the Stage 3 noise levels.

3. Section 91.805 is revised to read as follows:

§ 91.805 Entry and nonaddition rule.

(a) No person may operate to or from an airport in the 48 contiguous United States or the District of Columbia a civil subsonic turbojet airplane with a maximum weight of more than 75,000 pounds on or after November 5, 1990, unless one or more of the following conditions apply:

(1) The airplane complies with Stage 3 noise levels;

(2) The airplane complies with Stage 2 noise levels and is included in a U.S. operator's base level as defined in § 91.807(b), or was acquired from another U.S. operator after December 31, 1990;

(3) The airplane complies with Stage 2 noise levels and is operated by a foreign air carrier pursuant to the applicable provisions of § 91.807;

(4) The airplane complies with Stage 2 noise levels and is operated by a foreign operator other than for the purpose of foreign air commerce;

(5) The airplane complies with Stage 2 noise levels and—

(i) On November 5, 1990, was owned by:

(A) A corporation, trust, or partnership organized under the laws of the United States or any State (including the District of Columbia);

(B) An individual who is a citizen of the United States; or

(C) An entity owned or controlled by a corporation, trust partnership, or individual described in paragraph (a)(5)(i) (A) or (B) of this section; and

(ii) Enters into the United States not later than 6 months after the expiration of a lease agreement (including any extensions thereof) between an owner described in paragraph (a)(5)(i) of this section and a foreign air carrier; or

(6) The airplane complies with Stage 2 noise levels and was purchased by the importer under a written contract executed before November 5, 1990.

(b) As used in this section, the term—

Importer means one or more individuals and/or organizations specified in paragraph (a)(5)(i) of this section.

Owner means any entity described under paragraph (a)(5)(i) of this section that has indicia of ownership sufficient to register the airplane in the United States pursuant to part 47 of this chapter.

(c) A person may apply for a special flight authorization under SFAR No. to operate an airplane otherwise precluded by paragraph (a) of this section from operating to or from an airport in the 48 contiguous United States and the District of Columbia for the purpose of obtaining modifications to meet the Stage 3 noise levels.

(d) An operator of a civil subsonic turbojet aircraft with a maximum certificated takeoff weight of more than 75,000 pounds that does not comply with Stage 3 noise levels and was imported into a noncontiguous State, territory or possession of the United States on or after November 5, 1990, must include in its operations specifications a statement that such aircraft may not be used to provide air transportation to or from any airport in the 48 contiguous United States or the District of Columbia.

4. Section 91.807 is revised to read as follows:

§ 91.807 Phased Compliance under part 121, 125, 129, or 135: subsonic airplanes.

(a) General. Each person operating an airplane under parts 121, 125, 129, or 135 of this chapter, regardless of the national registry of the airplane, shall comply with this section with respect to subsonic airplanes covered by this subpart.

(b) Definition of base level. For purposes of this subpart, "base level" shall have the following meaning—

(1) For each U.S. operator the maximum number of owned or leased Stage 2 airplanes covered by this subpart that were listed on that operator's operations specifications for operations to or from airports in the 48 contiguous United States or the District of Columbia on any one day during the period January 1, 1990, through December 31, 1990, plus—

(i) the number of Stage 2 airplanes returned to service in the United States pursuant to § 91.805(a)(5); and

(ii) the number of Stage 2 airplanes imported pursuant to § 91.805(a)(6).

(2) For each foreign air carrier, the total number of Stage 2 airplane operations to or from the 48 contiguous States and the District of Columbia for the 12-month period from January 1, 1990, through December 31, 1990.

(c) New Entrants. For purposes of this subpart, the term "new entrant" means a U.S. air carrier that, on or before November 5, 1990, did not operate an airplane covered by this subpart to or from any airport in the 48 contiguous United States or the District of Columbia under 14 CFR parts 121 or 135, but that subsequently initiates such operations.

[*Under Option 1, discussed in the preamble, the following phaseout schedule would apply to new entrant air carriers*]:

(1) A new entrant initiating 14 CFR part 121 or 135 operations prior to the first interim compliance date shown in paragraph (d)(1) of this section may initiate service without regard to the percentage of its fleet composed of Stage 3 airplanes.

(2) After December 31, 1994, at least 25 percent of the airplane fleet of a new entrant initiating operating under 14 CFR part 121 to 135 must comply with the requirements of Stage 3.

(3) After December 31, 1998, at least 50 percent of the airplane fleet of a new entrant initiating 14 CFR part 121 or 135 operations must comply with the requirements of Stage 3.

(4) After December 31, 1998, at least 75 percent of the airplane fleet of a new entrant initiating 14 CFR part 121 or 135 operations must comply with the requirements of Stage 3.

[Note: Under Option 2, discussed in greater detail in the preamble, new entrants, along with other U.S. air carriers, would either achieve a required percentage reduction from their base level or obtain Stage 2 operating rights from another operator.]

(5) To be eligible to apply for the waiver under § 91.809, a new entrant must initiate service no later than January 1, 1999, and comply fully with all provisions of that section.

(d) Compliance schedules.

[*Under Option 1, discussed in the preamble, the following phaseout schedule would apply to U.S. operators, other than new entrants*].

(1) Each U.S. operator of a Stage 2 airplane to or from any airport in the 48 contiguous United States or the District of Columbia shall reduce the number of Stage 2 airplanes it operates to a maximum of—

(i) 75 percent of the operator's base level on and after December 31, 1994,

(ii) 50 percent of the operator's base level on and after December 31, 1996, and

(iii) 25 percent of the operator's base level on and after December 31, 1998.

(2) Except as provided under § 91.809, a U.S. operator shall achieve compliance with the schedule in paragraph (d)(1) of this section by reducing its fleet of Stage 2 airplanes by the required percentage of its base level for each compliance date. A Stage 2 airplane operated by a U.S. operator that was acquired from another U.S. operator after December 31, 1990, does not increase the base level of the acquiring operator.

[Note: Under Option 2, discussed in greater detail in the preamble, a percentage of each carrier's Stage 2 operating rights would expire on these dates, requiring the operator to retire a corresponding number of airplanes, convert them to Stage 3, or obtain unexpired Stage 2 operating rights from another operator.]

(3) Notwithstanding the compliance date specified in paragraph (d)(1) of this section, any U.S. airplane operator that achieves and maintains a fleet of airplanes that is composed of at least 85% Stage 3 airplanes that are permitted to operate in the 48 contiguous United States and the District of Columbia need not further reduce the number of Stage 2 airplanes it operates. Such operator shall still comply with the December 31, 1999, compliance requirement.

(4) Each foreign air carrier shall reduce the number of annual Stage 2 operations it conducts to all points in the 48 contiguous United States or the District of Columbia to a maximum of—

(i) 75 percent of the foreign air carrier's base level on and after December 31, 1994,

(ii) 50 percent of the foreign air carrier's base level on and after December 31, 1996, and

(iii) 25 percent of the foreign air carrier's base level on and after December 31, 1998.

(5) A foreign air carrier that had no more than two airplanes listed on its U.S. operations specifications during the period January 1, 1990 through December 31, 1990, may operate that number of Stage 2 airplanes in the 48 contiguous United States and the District of Columbia without regard to the compliance schedule in paragraph (d)(4) of this section.

(6) A foreign operator not engaged in foreign air commerce may operate a Stage 2 airplane to or from airports in the 48 contiguous United States and the District of Columbia through December 31, 1999, without regard to the compliance schedule in paragraph (d)(4) of this section.

(7) A new entrant shall comply with the phaseout schedule by achieving a total fleet composition comprised of no more than—

(i) 75 percent Stage 2 airplanes between January 1, 1995, and December 31, 1996;

(ii) 50 percent Stage 2 airplanes between January 1, 1997, and December 31, 1998;

(iii) 25 percent Stage 2 airplanes between January 1, 1999, and December 31, 1999.

(8) Calculations resulting in fractions may be rounded up to permit the continued operation of the next whole number of Stage 2 airplanes.

(e) As used in this section, the term "Stage 3 airplane" is limited to a civil subsonic turbojet airplane whose maximum certificated takeoff weight is not less than 75,000 pounds.

5. Section 91.809 is revised to read as follows:

§ 91.809 Waiver.

(a) If, by July 1, 1999, at least 85 percent of the airplanes used by a U.S. air carrier to provide air transportation to and from the 48 contiguous United States and the District of Columbia would comply with the Stage 3 noise levels of Part 36 of this chapter, such carrier may apply to the Administrator for a waiver of the prohibition contained in § 91.803 on the operation of Stage 2 airplanes for the remaining 15 or less percent of the airplanes by the carrier. Such applications must be filled with the Administrator no later than January 1, 1999, and must include a plan with firm orders for replacing or modifying Stage 2 airplanes operated by the carrier to comply with Stage 3 noise levels not later than December 31, 2003.

(b) The Administrator may grant a waiver under this subsection if the Administrator finds that granting such waiver is in the public interest. In making such a finding the Administrator will consider the effect of granting such waiver on competition in the air carrier industry and on small community air service.

(c) No waiver granted under this subsection shall permit the operation of Stage 2 airplanes after December 31, 2003.

6. Section 91.811 is revised to read as follows:

§ 91.811 Annual progress report.

(a) Each U.S. and foreign air carrier providing air transportation to or from any airport in the 48 contiguous States or the District of Columbia shall submit

to the Administrator an annual report on the progress such carrier has made toward complying with the requirements of this subpart. Such reports shall be submitted no later than 45 days after the end of the calendar year, beginning with calendar year 1992.

(b) U.S. and foreign air carrier progress reports must contain the information specified under paragraph (c) or (d) of this section. All progress reports must provide the information as it existed at the end of the calendar year, and must be certified by the carrier as true and complete (under penalty of 18 U.S.C. 1001).

(c) For U.S. air carriers—

(1) The initial progress report must include the following information—

(i) Name and address of the carrier;

(ii) Name, title and telephone number of the person designated by the carrier to be responsible for ensuring the accuracy of the information in the report;

(iii) The total number of Stage 2 airplanes identified as the air carrier's base level, listed by airplane type, model, and series (including serial and registration numbers). Those airplanes included in the carrier's base level pursuant to § 91.807(b)(1) (i) and (ii) shall be listed separately under the categories "Imported" or "Returned."

(iv) The total number of Stage 2 airplanes acquired by the carrier from other U.S. operators after December 31, 1990, listed by airplane type, model, and series (including serial and registration numbers). Such airplanes shall not be identified as part of the carrier's base level.

(v) The carrier's current plan to meet the compliance schedule required in § 91.807(d) and the final compliance date in § 91.803(b), including the schedule for delivery of replacement Stage 3 airplanes or the installation of replacement engines or hush kits.

(vi) The carrier's progress during the reporting period toward compliance with the requirements of this subpart, identifying:

(A) The type, model, and series (including serial and registration numbers) of each Stage 2 airplane removed from operation or modified to Stage 3 (identifying the make and model of replacement engines or hush kits); and

(B) The name and address of the recipient (including foreign entities) of any Stage 2 aircraft removed from operation.

(vii) The initial report shall cover the period between January 1, 1991, though December 31, 1992.

(2) Subsequent annual progress reports must include:

(i) The information required by paragraphs (c)(1) (i), (ii), and (viv) of this section;

(ii) The total number or Stage 2 airplanes added to the carrier's base level during the reporting period pursuant to § 91.807(b)(1) listed separately under the categories: "Imported" or "Returned";

(iii) The total number of Stage 2 airplanes acquired during the reporting period from other U.S. operators, listed by airplane type, model, and series (including serial and registration numbers); and

(iv) One of the following:

(A) Statement that the air carrier's current plan to meet the compliance schedule has not been revised;

(B) A statement listing specific revisions made to the plan during the reporting period in the same format as the initial plan; or

(C) A final statement reflecting actions completed by the carrier during the reporting period that accomplished compliance with § 91.803(b).

[Note: Under Option 2, discussed in greater detail in the preamble, U.S. carriers would instead report the number of Stage 2 operating rights in their possession, including expiration dates and source of acquisition.]

(d) For foreign air carriers—

(1) The initial progress report must include the following information—

(i) Name and address of the foreign air carrier;

(ii) Name, title, and telephone number of the person designated by the foreign air carrier to be responsible for ensuring the accuracy of the information in the report;

(iii) The total number of Stage 2 airplane operations included in the foreign air carrier's base level;

(iv) The foreign air carrier's progress toward compliance with the requirements of this subpart, listing, by city pair, the number of Stage 2 operations conducted during the reporting period, identifying—

(A) The type and model of airplane formerly used to perform the operation; and, if there has been a change,

(B) The type and model of airplane now being used to perform the operation.

(v) The number of all operations performed by Stage 2 airplanes to or from any airport in the 48 contiguous United States or the District of Columbia that were added during the reporting period, including city pairs for each operation.

(vi) The initial report will cover the period between January 1, 1991, and December 31, 1992.

(2) Subsequent annual progress reports must include the same information required by paragraphs (d)(1) (i), (ii), (iv), and (v) of this section or a final statement reflecting actions completed during the reporting period which accomplished compliance with § 91.803(b).

Issued in Washington, DC, on February 25, 1991.

James E. Densmore,

Director, Office of Environment and Energy.

[FR Doc. 91-4785 Filed 2-25-91; 3:19 pm]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

14 CFR Part 161

[Notice No. 91-8; Docket No. 26432]

RIN 2120-AD98

Notice and Approval of Airport Noise and Access Restrictions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration proposes regulations to establish a program for reviewing airport noise and access restrictions on the operations of Stage 2 and Stage 3 aircraft. This proposal is in response to specific provisions in the Airport Noise and Capacity Act of 1990 and is intended to become a major element of the national aviation noise policy, which is required to be established by that statute.

DATES: Comments should be submitted on or before April 15, 1991. Because of the statutory deadline for the issuance of a final rule, the FAA will not be able to entertain requests for extension of the comment period. However, late filed comments will be considered to the extent practicable.

ADDRESSES: Comments on this notice should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, attn: Rules Docket (AGC-10), Docket No 26432, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: John M. Rodgers, Office of Aviation Policy and Plans, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3274.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proceeding by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments on the economic impact should be accompanied by cost estimates. Comments should identify the docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments 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 substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26432." The postcard will be date stamped and mailed to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRMs should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The Airport Noise and Capacity Act of 1990 (the Act), Public Law 101–508, enacted November 5, 1990, directs the Secretary of Transportation to initiate several rulemaking proceedings. One of the provisions of the statute is to develop a national program to review noise and access restrictions on the operations of Stage 2 and Stage 3 aircraft.

Specifically, paragraph (a)(1) of section 9304 of the Act states:

> Sec. 9304. Noise and Access Restriction Reviews.
>
> (a) In General.—
>
> (1) Establishment of program.—The national aviation noise policy to be established under this subtitle shall require the establishment, by regulation, in accordance with the provisions of this section of a national program for reviewing airport noise and access restrictions on operations of Stage 2 and Stage 3 aircraft. Such program shall provide for adequate public notice and comment opportunities on such restrictions.

The development of a national policy with respect to airport noise has been under consideration by the FAA and encouraged by various segments of the aviation community for many years. Various organizations, groups, and task forces have made specific proposals along these lines. However, the aviation noise problem is a longstanding one, and serious efforts to deal with it extend back to the 1960's.

The aircraft noise issue became increasingly apparent in the early 1960's with the advent of jet aircraft, and was soon magnified by the rapidly increasing number of commercial operations in the latter part of that decade. Aircraft noise and attempts to limit it were recognized as major constraints on further developing the commercial aviation network, threatening the construction and expansion of airports, as well as access. Joint action by government and the private sector was taken to address community noise concerns. The engine manufacturers and the federal government both engaged in extensive research to quiet jet engines. In 1968, Congress gave the FAA authority to regulate aircraft design and equipment for noise reduction purposes. The FAA then embarked upon a long-term program of controlling aircraft noise at its source.

A regulation promulgated in 1969 (34 FR 18355, November 11, 1969) established noise standards for turbojet aircraft of new design (14 CFR part 36). A 1973 amendment to part 36 (38 FR 29569, October 26, 1973) extended the same standards to all new aircraft of older design. A third step in the source noise control program was a further amendment to part 36 (42 FR 12360, March 3, 1977) to require that jet aircraft already in the fleet be retrofitted to comply with noise standards.

In 1976, the DOT/FAA issued a comprehensive Aviation Noise Abatement Policy and promulgated a noise compliance rule (41 FR 56056, December 23, 1976). Recognizing the need for a comprehensive response to the noise problem, the Aviation Noise Abatement Policy set forth basic policy principles, specific authorities and responsibilities, based on the division of legal authority and practical responsibility of the federal government; airport proprietors; state and local governments and planning agencies; air carriers; air travelers and shippers; and residents and prospective residents in areas surrounding the airports. In addition, it set forth a clear understanding of what was technologically and financially attainable at that time, and how each party—the federal government, air carriers, and local airports and governments—could and should perform the functions for which it is uniquely suited.

On January 26, 1981, the FAA published an interim rule (46 FR 8316), titled "Establishment of New Part 150 to Govern the Development and Submission of Airport Operator's Noise Compatibility Planning Programs and the FAA's Administrative Process for Evaluating and Determining the Effects of Those Programs." The interim rule was in response to portions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193). The interim regulations prescribed a standardized airport noise compatibility program that is to include: (1) Noise exposure maps and noise compatibility programs by airport operators; (2) standard noise methodologies; (3) land uses that are normally compatible (or noncompatible) with various levels of noise around airports; and (4) procedures and criteria for FAA evaluation and approval or disapproval of noise compatibility programs. The interim rule was revised and became final on December 13, 1984 (49 FR 49260). In part, the revisions addressed comments received following promulgation of the interim rule. Throughout this period, the FAA worked in consultation with the Environmental Protection Agency.

More recent efforts to alleviate airport noise problems began in September 1984, when the Air Transport Association of America (ATA) petitioned the FAA to, among other things, issue a formal statement of policy concerning noise restrictions at federally certificated airports. The petitioner suggested issuing a Notice of Proposed Rulemaking that would announce the FAA's intention to establish an administrative mechanism to review current or future use restrictions and determine whether such

restrictions would be consistent with the agency's policy statement.

In January 1986, the FAA published in the Federal Register a notice of intent to state Federal policy on airport access and capacity. Generally local authorities are responsible for developing and managing the airport and controlling land use, while the Federal Government is responsible for managing and developing the air traffic control, navigation aids, and communications systems. The policy FAA proposed in 1986 was based on this concept of shared local-federal responsibility. The FAA intended to build upon the Federal action plan announced in the 1976 Policy by establishing common national policy objectives. These objectives would facilitate resolution of airport noise issues while respecting the needs that are unique to a local airport and its surrounding communities. The notice also announced plans for a series of public meetings on this subject.

In response to this notice, groups representing various interested parties formed committees to review aircraft noise/airport capacity issues (including economic studies, environmental issues, and legal issues) and to make recommendations to the FAA. While valuable work was accomplished by the committees, they were unable to reach full consensus on a recommended national aviation noise policy. Where the committees were unable to reach a consensus, such as on phase-out of Stage 2 operations, individual parties sometimes submitted alternative recommendations.

On March 8, 1990, the Secretary of Transportation announced a National Transportation Policy. The aviation noise element of the policy reflected many years of analysis and consultation with interested parties on airport use restrictions. Transportation, by its nature, cannot avoid affecting the environment, but a major goal of the federal transportation policy is to minimize those negative effects. With regard to aviation noise and noise restrictions, the federal government will provide the leadership necessary to protect quality of life from noise pollution, while ensuring that actions to minimize noise will not adversely affect the quality of the national aviation transportation system that Americans enjoy today. It is Federal transportation policy to opose noise-related restrictions that are unsafe, unreasonable, arbitrary, unjustly discriminatory, or an undue burden on interstate or foreign commerce or the national aviation transportation system, and to work with local communities and airport users to deter local actions that unreasonably interfere with system efficiency or increase system costs.

The FAA already has received a number of unsolicited comments regarding rulemaking to implement the Aviation Noise and Capacity Act of 1990. Comments were submitted by the National Business Aircraft Association, Airport Operators Council International and American Association of Airport Executives, Florida West Airlines, National Airport Watch Group, National Organization to Insure a Sound-controlled Environment, Air Transport Association of America, Air Freight Association, and Burlington Air Express. The comments were considered in developing this rulemaking action and, pursuant to Department of Transportation procedures, copies have been placed in Docket No. 26432.

General Discussion of Proposals

The proposed rule, 14 CFR part 161, Notice and Approval of Airport Noise and Access Restrictions, has been promulgated in response to direction given in "The Airport Noise and Capacity Act of 1990, 49 U.S.C. 2153, 2154, 2155, 2156." The Secretary has delegated his authority under section 9304 of the 1990 Act to the FAA Administrator.

The proposed rule provides for notice and analysis by airport operators of restrictions on Stage 2 aircraft operations. In addition, restrictions by airport operators on Stage 3 aircraft operations must be approved by the FAA. Federal approval is not required for restrictions on Stage 2 aircraft operations. The Act specifically exempts voluntary agreements regarding the operation of Stage 3 aircraft from federal oversight, and the proposed regulation extends that exemption to agreements on Stage 2 aircraft operation restrictions as well. Therefore, subpart B provides a process to identify such agreements respecting Stage 2 and Stage 3 aircraft operations and exempts them from requisite analysis and approval.

The Act mandates two conditions for airports' unilateral imposition of restrictions on Stage 2 aircraft operations. These statutory requirements, reflected in subpart C of this proposal are: (1) Analysis of the proposed restriction by the airport operator; and (2) a public notice and comment period. As required by the Act, the analysis must include costs and benefits of the proposal, a description of alternative measures considered, and comparative cost-benefit analyses of these alternatives. It is proposed that notice include both publication and direct notice to interested aircraft operators, the FAA and certain federal, state, and local government agencies. The airport operator is allowed to utilize the notice and comment procedures contained in 14 CFR part 150 as an alternative to these notice and comment requirements.

Restrictions unilaterally imposed by airports on Stage 3 aircraft operations are required by the Act to be approved by the Secretary of Transportation, with approval contingent upon substantial evidence that six statutory conditions have been met. Subpart D would establish the approval process for restrictions on Stage 3 aircraft operations. It includes completion and submission of an analysis of the restriction, notice and comment requirements, plus submission of a summary of evidence that the six necessary conditions are met. Publication and direct notice requirements are identical to those proposed for Stage 2 restrictions (including the Part 150 procedure alternative). The FAA has applied an expansion of the statutorily mandated analysis for Stage 2 restrictions to the Stage 3 restriction process, plus the additional requirement that the analysis contain evidence that the six statutory conditions necessary for approval are satisfied. At the close of the comment period, the applicant submits the proposal (with the analysis, a summary of evidence that the statutory conditions are met, evidence of the public review process and a summary of comments, and a draft environmental document) to the FAA. The FAA has a limited period for initial review of an application for completeness and return for supplemental information. On receipt of a complete application, the FAA publishes a notice of the proposal in the Federal Register and invites comments. At the end of this comment period, the FAA publishes an approval/disapproval order in the Federal Register.

A reevaluation process for existing restrictions and agreements on Stage 3 aircraft operations is mandated by the Act. This process, proposed in subpart E, requires FAA approval, is limited to Stage 3 restrictions, and must be requested by an aircraft operator. An applicant seeking a reevaluation must produce evidence that the statutory condition for reevaluation—a change in the affected airport's noise environment—has been met. If the FAA agrees, the applicant must publish notice of its request; directly notify interested parties; prepare an analysis that one or more of the conditions necessary for federal approval of a restriction on airport operations has been violated;

and seek public comment. At the close of the comment period, the applicant sends its analysis and comments to the FAA, along with evidence that at least one of the six statutory conditions necessary for initial approval of the Stage 3 restrictions have been violated. After receiving this documentation, the FAA will publish a notice in the **Federal Register** of the request, solicit comments, and determine whether the challenged restriction continues to meet federal standards. The FAA will publish its decision in the **Federal Register**.

Statute-mandated sanctions for noncompliance with this rule are covered in proposed subpart F. They consist of termination of Airport Improvement Program funds and rescission of Passenger Facility Charge collection authority. Consideration of sanctions is triggered by a complaint to the FAA or other evidence of noncompliance. The process allows for airport operator response to the allegations, as well as public comment on the complaint. After consideration of the evidence, the FAA publishes a notice of the complaint in the **Federal Register** and notifies the affected airport operator.

Each of the proposed subparts of the rule is discussed in greater detail below.

Subpart A, proposed general provisions, addresses the purpose, applicability, and limitations of the proposed rule as outlined in the Act. Based on section 9304 of the Act, the proposed rule would apply to restrictions on Stage 2 aircraft operations proposed after October 1, 1990, and to restrictions on Stage 3 aircraft operations that become effective after October 1, 1990. The subpart also defines common terms used throughout the proposed regulation.

Determinations and actions by the Administrator under this part would not constitute determinations or actions with respect to an airport's compliance status under specific grant agreements, or preclude the Administrator from responding to complaints involving grant compliance. Information and documents used under this part may also be used with respect to grant compliance matters.

As required by the Act, the proposed rule covers "noise" and "access" restrictions on the operations of Stage 2 and Stage 3 aircraft. Section 9304(b) of the Act states four specific kinds of Stage 3 restrictions that must either be agreed to by the airport "proprietor" and aircraft operators or approved by the FAA. These are: (1) Restrictions on noise levels; (2) direct or indirect limits on the number of operations; (3) noise budgets and noise allocation programs; and (4) limits on the hours of Stage 3 operations. Section 9304(b) also prohibits "any other limit on Stage 3 aircraft," unless it is agreed to or approved by the FAA. While the Act does not provide comparable guidance on the kinds of noise or access restrictions on Stage 2 aircraft that are to be covered by this rulemaking, the FAA proposes the same scope for Stage 2 as for Stage 3. That is, noise restrictions would be subject to the proposed rule, as would access restrictions, that limit or reduce the hours of operation at the airport or the total number of Stage 2 or Stage 3 operations.

Certain restrictions, however, would not be subject to some requirements of the proposed rule. Section 9304 of the Act prescribes specific exemptions from the requirements for notice, review, and approval, and these are included in proposed § 161.7(c). In addition, the proposed rule would not apply to noise abatement operational procedures, unless such procedures have the effect of limiting the total number of operations or the hours of operation of the airport.

The FAA notes that the definition of a covered noise or access restriction under proposed § 161.5 would include "a program of airport use charges that has the direct effect of controlling airport noise." However, this phrase is not intended to preclude airports' application of a peak-hour pricing program designed to align operations with capacity. The phrase is primarily intended to refer to noise-based landing fees and other such noise-based charge-assessment programs. We invite comments on the proposed definition in this section and on ways to ensure that the final rule carries out the requirements of the Act without placing unnecessary or unintended limitations on the right of airport operators to promote efficient operations. Public comment is also invited on these related questions:

1. Is the proposed definition of "noise or access restriction" too broad? If so, why, and how should it be revised?

2. Should an "access" restriction that is unrelated to noise be subject to this regulation? If not, how should the FAA reasonably distinguish whether a restriction is related to noise? Is there a risk that restrictions nominally adopted for other purposes will actually be intended to circumvent requirements for noise restrictions?

3. Should a restriction or airport use charge that has an "indirect" effect of controlling noise be subject to this regulation?

4. What procedure, if any, should the FAA adopt to resolve any dispute over whether a restriction is subject to this regulation?

It should be noted that this proposal does not address the safety aspects of operational procedures that have been (or may be) recommended by airport operators to reduce noise impact. Noise or access restrictions must be acceptable to the Administrator from a safety, as well as an environmental, perspective. To the extent that the FAA has any safety concerns about such airport noise or access restrictions, they will be dealt with under applicable existing safety regulatory authorities, e.g., 14 CFR parts 91, 121, 129, 135, and 139.

Finally, subpart A specifies that noise measurement systems and land use categories used to comply with prescribed notice and approval requirements must be in accordance with 14 CFR part 150. Part 150 establishes the noise measurement systems and the identification of land uses that are normally compatible or noncompatible with various levels of noise around airports. Part 150 was promulgated in response to a mandate in the Aviation Safety and Noise Abatement Act of 1979 that the FAA issue a regulation including a single, standardized methodology for measuring aircraft noise and for determining the exposure of individuals to aircraft noise. The FAA uses the methodology in Part 150 for airport noise compatibility planning, for evaluating the noise effects of proposed airport development projects, as well as for other types of environmental evaluations that the FAA performs or requires. It is consistent for the FAA to apply this methodology to the analysis of restrictions in the proposed rule. The objective is to assure that similar methods will be used to characterize each proposed restriction, thereby facilitating comprehensive, fair, and consistent evaluations of the restrictions by the public and the FAA.

Subpart B pertains to voluntary agreements between airport operators and aircraft operators concerning noise or access restrictions on Stage 2 or Stage 3 aircraft operations. These agreements, while exempt from the analysis requirements for restrictions unilaterally imposed, do have notice requirements. Notice by publication is required, as well as direct notice to interested or affected aircraft operators, the FAA, and certain federal, state and local agencies. The FAA must be notified of the agreement's implementation, receive evidence that

the notification requirements have been met, and receive a copy of the signed agreement. FAA notification is also necessary when the agreement is terminated. While the Act discusses agreements only in the context of an alternative to Secretarial approval of Stage 3 restrictions (section 9304(b)(5)), proposed subpart B would treat agreements involving Stage 2 and Stage 3 restrictions alike. The objective of the proposed subpart is to clearly identify the existence and nature of the agreements. Subpart B would provide advantages to involved parties by excluding agreements from the process requirements proposed in subparts C and D (below). For example, analyses would not be mandated for agreements, nor would FAA final approval be required. Additionally, the proposed agreement procedure imposes minimal notice requirements compared to those proposed for restrictions. By limiting process requirements, reducing attendant costs, and minimizing federal government involvement, the agency views the proposed subpart B as advantageous to all concerned.

The proposal includes definitional limitations, discussed below, that are intended to simplify the agreement process. It also proposes to require the airport operator to provide notice of the agreement to the FAA and other interested parties, and to provide the FAA with a copy of the signed agreement. While the Act provides that "all aircraft operators" must join in the agreement, the statutory language focuses on the restrictions proposed at a particular airport. Because it would serve no useful purpose to require agreement from every U.S. and foreign aircraft operator that might at some point operate at a particular airport, the FAA is proposing two practical limitations.

First, under proposed § 161.101, it would only be necessary to obtain agreement of affected operators. This simply means that only those aircraft operators subject to the restriction contained in the agreement need to agree to it. If, for example, an agreement is proposed with respect to certain types of aircraft, only operators of those aircraft types would have to enter into the agreement.

Second, and more important, it would only be necessary to obtain the agreement of affected aircraft operators that are currently serving the airport or that have indicated an intention to institute service at the airport within 180 days of the effective date of the agreement. This proposal is intended to strike a balance between the interest in keeping the number of aircraft operators that must consent to the agreement within practicable limits and the need to ensure that new entrants at the airport are not excluded by virtue of the agreement.

Of course, most agreements will not have any exclusionary effects: many will involve little more than a promise by affected aircraft operators who have signed it to use their best efforts to conform with practices designed to limit noise in the areas surrounding the airport. In most cases, the FAA does not anticipate that any aircraft operator would have difficulty subscribing to an agreement of this nature. Other types of agreements are potentially more troubling. For example, agreements regarding the types of aircraft that may be used, the hours of operation at the airport, and noise budgets may all affect specific aircraft operators or classes of operators differently than others. For this reason, the proposed rule would require that any agreement include aircraft operators with firm plans to institute service as well as those already at the airport. The FAA chose 180 days as a reasonable cut-off point to distinguish aircraft operators whose intention to provide service is well developed, and who therefore may be viewed as having a significant interest in the subject of the agreement, from those operators whose plans for service are still under development.

For similar reasons, the proposed rule would require the airport operator to publish a notice of the agreement in a newspaper of national circulation, an areawide newspaper of general circulation, and aviation trade publications, and to give direct written notification to aircraft operators serving the airport or known to be interested in serving the airport, if they would be affected by the agreement. The airport operator would also have to notify the FAA and other interested federal, state, and local government agencies. The published and direct notifications provided by the airport would have to provide a clear description of the terms of the agreement, including its purpose, effective date, and the aircraft operators or types of operators affected by the agreement. In order to qualify as parties to the agreement, new entrant aircraft operators would have 45 days following the initial publication to provide evidence that they intended to institute service at the airport within 180 days after the effective date of the agreement.

The proposed rule would also require that the airport operator notify the FAA when the agreement actually goes into effect. If the agreement is terminated for any reason, such as expiration or withdrawal by one or more parties, the airport operator would have to notify the FAA and state its intention with respect to the provisions of the terminated agreement. Any continued application of a noise or access restriction would require compliance with proposed subpart C or subpart D.

As noted above, the FAA proposes to recognize noise or access agreements with respect to State 2 operations, and exempt them from cost benefits analysis requirements prescribed by the Act for restrictions on State 2 aircraft operations under subpart C, even though the Act is silent on this matter. This proposal is based on the benefits of agreements and the safeguards of public notice contained in the NPRM. Just as an agreement pertaining to State 3 operations would not be covered by the notice, analysis, and approval requirements proposed for restrictions under Subpart D of this NPRM, an agreement pertaining to Stage 2 operations would not involve the notice and economic analysis that would be required for restrictions under proposed subpart C. In addition, although airports would have to give the 45-day notice described above, the agreements could be effective without the 180-day waiting period required for Stage 2 restrictions under subpart C.

The FAA invites comments on all of the provisions discussed above. In addition, commenters' attention is particularly directed to the following questions. After further consideration by the FAA and review of the comments received, the final rule may be modified significantly from this proposal.

1. Are the notice requirements proposed for agreements reasonable? Although the Act does not expressly require the form of notice proposed here, should this rulemaking require it? If published and direct notification should be mandatory, can the requirements be made less burdensome? For example, since affected aircraft operators would, by definition, be parties to the agreement, could the regulatory burden be reduced appreciably by relying exclusively on published notice, and deleting the requirement for direct notification of aircraft operators and public agencies? Would publication alone, as outlined in the proposed rule, be sufficient notice? Would this provide adequate information to new entrants? Is 45 days a reasonable period for reply to published notices? Is it reasonable to require that the FAA be notified of the implementation and termination of agreements?

2. Is the proposed requirement for a written and signed agreement reasonable? A signed, written agreement would undoubtedly lessen the chance of misunderstanding among parties. On the other hand, the FAA is concerned that requiring agreements to be in writing might unnecessarily complicate and delay the agreement process. This, in turn, might mean fewer agreements, more noise problems, and more restrictions requiring FAA approval, which could result in even more delay and expense.

3. The FAA has proposed to require the agreement of those aircraft operators currently serving the airport or intending to do so within 180 days of the effective date of the agreement. Is this a reasonable requirement in light of the statutory reference to agreement by "all aircraft operators"? One alternative might be to give constructive notice to all aircraft operators through publication of the agreement; the failure of an aircraft operator to object to the restriction contained in the agreement would be considered consent. One potential drawback to such an approach would be that any aircraft operator, whether or not it serves the airport, could then object to the agreement and delay its implementation until the airport operator complies with proposed subpart C or obtains FAA approval of the restriction under proposed subpart D. This would require the airport to undertake the time and expense necessary to conduct the analyses required for a restriction under proposed subpart C or subpart D.

4. What recourse, if any, should be available to an aircraft operator not covered by the 180-day new entrant limitation? That is, if an aircraft operator wants to initiate service some months or years after the agreement has gone into effect, to what extent may it appropriately be barred by the terms of the agreement? Should the FAA treat an agreed to restriction on a new entrant as a subpart C or subpart D restriction, which would then be subject to FAA approval with respect to the new entrant? Should it matter whether the new entrant was in existence at the time the original agreement was announced? Would other remedies, e.g., the antitrust laws (where treble damages may be available), be sufficient to protect the interests of new entrants against exclusionary agreements?

5. Is it appropriate to allow agreements to cover Stage 2 operations as well as Stage 3? Is there a need to require an economic analysis and 180 days' notice on Stage 2 restrictions, as contemplated by the Act, if the airport operator and the affected aircraft operators can agree?

Subpart C pertains to review of proposed restrictions on Stage 2 aircraft operations. Restrictions on Stage 2 aircraft operations that are unilaterally imposed by airport operators are subject to analysis, notice and comment requirements. The analysis must include cost and benefit estimates of the proposal and alternatives that were rejected. Publication and direct notice by airport operators is mandated (as required in subpart B for agreements), but use of the 14 CFR part 150 notice and comment procedures are allowed as an alternative. If substantial changes are made to the proposal, a new notice and comment period is triggered.

The Act permits airport operators to impose restrictions on Stage 2 aircraft operations, subject to two conditions. First, the airport operator must prepare an analysis of the anticipated costs and benefits of the proposed restriction. Second, the operator must publish the proposed restriction, together with its analysis, at least 180 days before the effective date. Interested parties would then have an opportunity to comment. The statute requires the analysis to include: (1) Anticipated or actual costs and benefits of the existing or proposed noise or access restriction; (2) a description of alternative restrictions; and (3) a description of the alternative measures considered that do not involve aircraft restrictions, along with a comparison of the costs and benefits of such alternative measures to the costs and benefits of the proposed noise or access restriction. The Act applies to Stage 2 restrictions proposed after October 1, 1990.

In carrying out the Act, the rule proposes a process for analysis of, and notice and comment on, the proposed restriction. FAA has attempted to limit the burden of requirements while still ensuring that adequate information is available to provide a clear understanding of the proposed restriction and its effects. The Act maintains the existing authority (and limitations thereon) and discretion of airport operators to restrict the operation of Stage 2 aircraft. Airport operators are not required to obtain approval by the FAA of a restriction imposed on Stage 2 aircraft operations. However, the Act instructs the Secretary to formulate a national program to phase out the operation of Stage 2 aircraft by December 31, 1999, and a Notice of Proposed Rulemaking to carry out this requirement appears elsewhere in this issue of the **Federal Register**.

Given this national program, it is anticipated that only in exceptional circumstances will airports propose to eliminate or phase out the operation of Stage 2 aircraft in advance of the deadlines established by the Federal Government. Airports that do propose early phase outs are encouraged to highlight the net benefits of the "accelerated local phase out," in the public notice and analyses required by the Act as described later in the discussion of this subpart. It is important that airport operators demonstrate that the local restrictions are not discriminatory and do not constitute an undue burden on interstate commerce, or an undue burden on the national aviation system.

The statutory requirement for review of restrictions on Stage 2 aircraft operations does not apply to those reached through agreement in subpart B or those exempted by the Act. The Act specifically exempts amendments to existing restrictions on Stage 2 aircraft operations that do not reduce or limit aircraft operations or affect aircraft safety.

As the Act requires, the proposed rule states that an airport operator must provide notice and opportunity to comment at least 180 days before the effective date of the restriction. The FAA has determined that the notice should be published in a newspaper of national circulation, an areawide newspaper of general circulation, and in aviation trade publications. The airport operator would also be required to notify directly aircraft operators currently serving the airport and those known to the airport operator to be interested in serving the airport that could be affected by the restriction. The latter requirement was added to consider potential new entrants. The airport operator would also be required to notify the FAA and other federal, state, and local government agencies with facilities or land use control jurisdiction within the airport noise study area. While the requirements for notification as proposed are extensive, they do not specify a unique source that can always be relied on by various airport users or interested parties. Comments are therefore invited on whether the FAA should publish in the **Federal Register** a brief summary of any restriction proposed by airport operators.

The proposed rule specifies the information that would have to be included in the published and direct notifications to ensure that consistent and complete information is provided to those affected or interested in the

proposed restriction. The primary requirements are for a clear, concise description of the proposed restriction, a brief discussion of the specific need for and goal of the restriction, and a summary of the analysis of the restriction. The full analysis of the restriction could be included in the notice if the airport operator so chooses or could otherwise be made available by the airport operator for interested parties to review.

Other requirements for notice include identification of the aircraft operators expected to be affected, so that it is clear which carriers the airport operator believes are affected by the proposed restriction, the proposed method of implementation (e.g., city ordinance, airport rule), and any proposed enforcement mechanism. The proposed method of implementation and any proposed enforcement mechanism will provide further clarification on the restriction and ramifications of failure to comply with it.

In carrying out the statutory requirement for analysis of the proposed restriction, the proposed rule reiterates the language in the Act, as stated earlier in the preamble, requiring analysis of anticipated or actual costs and benefits, description of alternative restrictions, and a description of alternative measures considered and a comparison of the costs and benefits. The analyses must be conducted in accordance with generally accepted economic analysis methods and reflect airline industry practice. Noise analysis and the identification of the airport noise study area must conform to the requirements of 14 CFR part 150, as prescribed in subpart A of this proposal. The airport operator must specify methods used to analyze costs and benefits so that interested parties are able to conduct an informed review.

In addition to the analysis required by the Act, the proposed rule encourages the airport operator to provide specific information about the proposed restriction, similar to information provided for a Stage 3 restriction. The analysis for Stage 3 restrictions includes four types of information: (1) Background information; (2) analysis of the effect of the rule on airport operations, capacity, and aircraft noise; (3) description of alternative restrictions; and (4) a comparative analysis of the benefits and costs of proposed restrictions and alternative restrictions. The latter two requirements are directly mandated by the Act, while the first two are considered necessary to comprehend and evaluate the analysis required by the Act.

While not specifically required by law or the proposed rule, the FAA believes that this kind of information would be a useful element of an adequate analysis of a noise or access restriction and the alternatives. The airport operator would be given discretion in applying this guidance to its specific restriction because each proposed restriction may require a unique approach to properly estimate its impact and that of alternative nonaircraft restrictions. The FAA seeks comments on these issues.

In the final rule, it may be more useful to those reviewing the proposed restrictions to require the analysis described above rather than just encourage it. On the other hand, types of restrictions may vary considerably, and it may be difficult to adequately apply all the analysis requirements to various specific situations. It may also be appropriate to require different levels of analysis depending on the nature of the airport or airport operations where the restrictions are proposed (e.g., commercial service versus general aviation airports) or on the type of restriction itself (e.g., absolute ban on operations versus an hourly limit or curfew). Permitting some airport operators to provide more limited analysis may reduce the cost to the airport operator of implementing the restriction and expedite timely implementation without adversely affecting aircraft operators or the public.

The final rule may, therefore, require all or a portion of the analysis components identified in subpart D for each proposed restriction on Stage 2 aircraft operations. The public is specifically invited to comment on the following issues:

1. Should detailed analysis requirements for restrictions on Stage 2 aircraft operations, similar to those required for restrictions on Stage 3 aircraft operations, be specified in the rule? Alternatively, should optional detailed analysis requirements be described in an FAA advisory circular? Beyond the requirements of the statute, should any specific analysis be required or encouraged in the final rule?

2. Should the analysis required for restrictions on Stage 2 aircraft operations vary with either type of airport or type of restriction? If so, what should be the basis for differentiating analysis requirements?

3. Should the airport proposing a restriction on Stage 2 aircraft operations be required to explain explicitly why the restriction is not unreasonable, arbitrary, or discriminatory; an undue burden on interstate or foreign commerce; or an undue burden on the national aviation system, since these are among the grounds for FAA legal action?

Proposed Subpart C would require each airport operator to establish a public docket or similar method for receiving and considering comments and to make the comments available to interested parties upon request. A minimum 45-day comment period would be required. The public is invited to comment on whether the minimum length of time to comment is adequate. If changes are made to the proposed restriction, the operator would be required to advise interested parties, and make any changes to the proposed restriction and its analysis available.

If there is a substantial change to the proposed restriction or the analysis during the 180-day notice period, the operator would be required to begin the notice process again. Examples of a substantial change are a more restrictive proposal or a revision that alters the way impacts are apportioned among aircraft operators. A new notice would be required to permit parties an adequate opportunity to comment. The FAA seeks comments on what types of changes to the proposal should require a new notice.

Airport operators would have the option of using part 150 procedures for notice and comment, because much of the required process is similar to that required under part 150. The part 150 process is more comprehensive in scope in that it includes compatible land use planning, as well as restrictions on aircraft operation. The FAA, therefore, encourages use of part 150 for meeting the notice and comment requirements of this subpart. The analysis of restrictions on Stage 2 aircraft operations would have to be provided in the part 150 process to meet the requirements of this rule.

If an airport operator decides not to implement the restriction, the interested parties must be notified that the restriction will not go into effect.

As proposed, Subpart C would require airport operators to provide notice and comment on any proposed restriction with respect to all categories of Stage 2 aircraft, regardless of the weight of the aircraft. As directed by the Act, the FAA is conducting a study for the Secretary of Transportation on the applicability of subsections 9304 (a), (b), (c), and (d) of the Act to restrictions on the operation of Stage 2 aircraft that weigh less than 75,000 pounds. A draft of the study results produced thus far, "Application of Notice and Analysis Requirements to Operating Noise/Access Restrictions on Subsonic Jets Under 75,000 Pounds," is

included in the docket for public inspection. This FAA study is ongoing. A final report and final recommendations to the Secretary on the applicability of section 9304 to small Stage 2 aircraft will be completed prior to issuance of the final rule.

The draft FAA study considers noise levels produced by such aircraft, the benefits of general aviation, differences in the nature of operations at airports, and international standards with respect to airport noise and other factors. Nothing in the analysis suggests that it would be appropriate to give these aircraft less protection than heavier aircraft against local restrictions. Study results thus far do not provide clear justification to treat Stage 2 aircraft under 75,000 pounds in the same manner as Stage 3 aircraft as advocated by the National Business Aircraft Association (NBAA).

The NBAA arguments are provided in an unsolicited submission to the Secretary entitled "The Applicability of Section 9304 of the Airport Noise and Capacity Act of 1990 to Stage 2 Aircraft Weighing Less than 75,000 Pounds." As required by Department of Transportation procedures, a copy of this submission has been placed in Docket No. 26432. NBAA contends that Congress contemplated according Stage 2 aircraft weighing less than 75,000 pounds the status of Stage 3 aircraft for purposes of section 9304 of the Act. The Act exempts aircraft of less than 75,000 pounds from the Stage 2 phase-out requirement and the non-addition rule. NBAA argues that, in general, small Stage 2 aircraft are comparable to single-event noise created by Stage 3 air carrier aircraft, and that small Stage 2 aircraft do not generally cause noise problems at airports served by air carriers.

Data presented in the FAA draft study do not show a consistent relationship between noise produced and the weight of Stage 2 aircraft. Some small Stage 2 aircraft are noisier than Stage 3 aircraft. Aircraft noise heard on the ground is the result of complex factors in the design and operation of the aircraft, and weight alone cannot be used to determine noise produced. Also, general aviation airports that are frequented by Stage 2 aircraft weighing less than 75,000 pounds often have less land in buffer zones around the airport, or are surrounded by noncompatible land uses. Typically, the ambient noise levels surrounding general aviation airports are also distinctly lower, making individual flights more noticeable. The public is invited to comment on the FAA and NBAA studies, and to provide data that would help resolve the issue on whether the final rule should distinguish Stage 2 aircraft weighing less than 75,000 pounds. Comments on both studies should be submitted to the docket and will also be considered as comments on this aspect of the proposal.

Subpart D concerns the approval of restrictions on Stage 3 aircraft operations that are not the product of voluntary agreements (within the scope of subpart B). In subsection 9304(c), the Act provides that no airport noise or access restriction on the operations of Stage 3 aircraft may be imposed unless it has been agreed to by the airport operator and all aircraft operators, or has been submitted to and approved by the Secretary pursuant to an airport or aircraft operator's request for approval. The Secretary is required by subsection 9304(d) of the Act to approve or disapprove an application not later than the 180th day after receipt of a request for approval and shall not approve a restriction unless there is substantial evidence that six conditions have been met. Secretarial authority has subsequently been delegated to the FAA Administrator. The Federal Government is only empowered with approval or disapproval authority for Stage 3 restrictions and does not have similar authority with respect to voluntary agreements.

The conditions of approval, as defined in the Act, are that the proposed restriction: (1) Is reasonable, nonarbitrary, and nondiscriminatory; (2) does not create an undue burden on interstate or foreign commerce; (3) is not inconsistent with maintaining the safe and efficient utilization of the navigable airspace; (4) does not conflict with any existing Federal statute or regulation; (5) has been subject to adequate opportunity for public comment; and (6) does not create an undue burden on the national aviation system.

To implement the requirements of the Act, the FAA proposes a four-step process. First, to provide substantial evidence, the applicant (airport operator or aircraft operator) must develop an analysis of the proposed restriction. Second, the analysis and other pertinent information must be made available for notice and comment to interested parties. Third, the operator must develop and submit an application to the FAA, including a summary of substantial evidence of compliance with the six statutory conditions. Fourth, the FAA will review and approve or disapprove the application within 180 days.

The FAA has attempted to limit the compliance burden while ensuring that adequate information is available to allow an approval or disapproval to be made based on an evaluation of evidence presented regarding the six statutory conditions.

As required by the Act, the rule would apply to proposed restrictions on Stage 3 aircraft that first become effective after October 1, 1990, except for those specifically exempted by subsection 9304(a) of the Act. As with the treatment of proposed restrictions on Stage 2 aircraft, a subsequent amendment to a restriction on Stage 3 aircraft in effect on the date of enactment, or an amendment to a restriction on Stage 3 aircraft previously approved by the FAA, would be subject to the procedures of this subpart, as required by the statute, if the amendment will: (1) Further reduce or limit aircraft operations; or (2) affect aircraft safety.

As mandated by law, the proposed rule would require that the applicant provide notice and opportunity for public comment before submitting the restriction for FAA approval. To provide adequate notice, the FAA proposes that the notice be published in a newspaper of national circulation, and areawide newspaper of general circulation, and in aviation trade publications.

Airport operators would also be required to directly notify the FAA and other interested federal, state, and local government agencies, and aircraft operators serving the airport, and those known to the airport operator to be interested in serving the airport, that could be affected by the restriction. Consistent with the Stage 2 process, the latter requirement was added to take into account potential new entrants.

The proposed requirements of subpart D for publication and direct notice would be the same as those proposed in subpart C for the Stage 2 notice process. As proposed here in subpart D, the primary notice requires a clear, concise description of the proposed restriction, a brief discussion of the specific need for and goal of the restriction, and a summary of the analysis of the proposed restriction. The full analysis of the restriction could either be included in the notice, if the applicant so chooses, or made available by the applicant for interested parties to review. The notice would also include identification of the aircraft operators expected to be affected, the proposed method of implementation (e.g., city ordinance, airport rule) and any proposed enforcement mechanism.

The proposed analysis requirements are designed to provide the FAA with the information necessary to make the statutorily required findings. By statute,

the Secretary cannot approve a proposed restriction unless there is substantial evidence that the proposed restriction: (1) Is reasonable, nonarbitrary and nondiscriminatory; (2) does not create an undue burden on interstate or foreign commerce; (3) is not inconsistent with maintaining the safe and efficient use of the navigable airspace; (4) does not conflict with any existing Federal statute or regulation; (5) has been subject to adequate opportunity for public comment; and (6) does not create an undue burden on the national aviation system.

The FAA believes that the burden is properly placed on the applicant to prove substantial evidence of compliance with the six statutory conditions. To ensure that substantial evidence is available, the FAA proposes that an analysis be developed to provide an adequate understanding of the proposed restriction and to provide the information necessary to support the six statutory conditions. Using that analysis, the applicant would provide a summary of evidence establishing that each of the six statutory conditions has been met. Because the Act requires an analysis of costs and benefits for proposed restrictions on Stage 2 aircraft, and because such analysis has a direct bearing on determinations of undue burden, the FAA believes the same information is appropriate for the review and approval of proposed restrictions on Stage 3 aircraft.

Both the analysis and the summary of evidence regarding compliance with the six conditions would be made available during the notice and comment period and provided to the FAA as part of the application.

To develop the analysis, the FAA proposes that the following elements must be provided: (1) the text of the proposed restriction; (2) a detailed description of the problem; (3) background information, including maps and projected activity data; (4) descriptions of alternative nonaircraft measures that have been considered and rejected; (5) the effect of the restriction on airport operations and capacity; (6) the expected impact on aircraft noise, with and without the restriction; and (7) comparative analyses of the benefits and costs of the proposed restriction and alternative measures.

The FAA believes that the first three elements are necessary to understand the purpose and context of the proposed restriction and should not present a burdensome requirement. The remaining four elements should demonstrate that the proposed restriction is not unreasonable, arbitrary, discriminatory, an undue burden on interstate or foreign commerce, or an undue burden on the national aviation system.

Specifically, a description of alternative nonaircraft measures considered and rejected would address whether the proposed restriction is arbitrary. The effect of the proposed restriction on airport operations and capacity would be important to determine whether the restriction is discriminatory or an undue burden. The expected impact on aircraft noise, with and without the restriction, would be essential in determining reasonableness of the restriction. Finally, an analysis of the benefits and costs would also be important in determining whether the proposed restriction would be an undue burden on interstate or foreign commerce, or an undue burden on the national aviation system.

Within these general requirements for analysis, the rule proposes guidance on the type of information that should be developed as the basis for the analysis of the restriction, if reasonably available and appropriate in the particular case. There are no mandatory requirements, only guidance, in the proposed rule as to consideration of specific components in the required cost-benefit analysis; considerable discretion is allowed applicants in the proposed rule with regard to the components utilized in the analysis. For instance, general aviation airports that are not used by scheduled air carriers may not need to consider the economic effect of the proposed restriction on air carriers and airline passengers. Similarly determined by a specific airport's situation, an analysis of the proposed restriction's economic effect on providers of airport services other than aircraft operators would not be needed if none would be affected. These instances exemplify the flexibility envisioned by the proposed rule's guidance.

The analysis would be conducted in accordance with generally accepted professional practice for estimating costs and benefits and applicable Federal guidelines for analyses of noise. Proposed subpart D identifies components of costs and benefits that the analysis should consider, if appropriate. However, consideration of specific components of costs or benefits would not be mandatory in this rule as proposed; flexibility is allotted to applicants as to the components of the requisite cost-benefit analysis.

The proposed rule thus provides general requirements for cost-benefit analyses, instead of detailed methodology, because a unique approach may be required to estimate properly the effect of each proposed restriction and its alternatives. The FAA is seeking comments on the proposed requirements of the analysis and the supporting guidance. While the FAA understands that each item of information may not always be appropriate for all situations, the proposed rule sets out an illustrative list of elements of an analysis. The final rule may specifically require that the applicant conduct all or a portion of analysis components identified in proposed subpart D. The public is specifically invited to comment on the following issues regarding the analysis:

1. Are the proposed analysis requirements appropriate?

2. How would compliance with the conditions of approval be demonstrated in the absence of equivalent analysis?

3. Should the elements of analysis for proposed restrictions on Stage 3 aircraft be detailed in the rule, or described in an FAA advisory circular?

4. Should all applicants be required to consider a specific list of costs and benefits in the analysis of their proposed restrictions on Stage 3 aircraft operations, rather than have the flexibility as proposed?

5. Should the required analysis of a restriction on Stage 3 aircraft operations vary with either type of airport or type of restriction? If so, what categories should be established to differentiate analysis requirements.

As proposed, once the analysis is complete, the applicant would develop a summary of evidence, based on the analysis, showing that the six statutory conditions for approval have been met. FAA would also review the applicant's analysis with regard to the six conditions. However, FAA believes that it is to the applicant's benefit to construct its own summary of evidence, highlighting those results of the analysis that the applicant believes would substantiate the conditions for approval.

The FAA further proposes guidance on each of the six conditions defining evidence that the FAA believes would demonstrate fulfillment of the statutory conditions. For instance, under evidence that the restriction is reasonable, nonarbitrary, and nondiscriminatory, the proposed guidance recommends evidence that a current or projected noise or access problem exists, and evidence that there is a reasonable change that expected benefits will equal or exceed expected costs.

The guidance includes elements that would be developed as part of the analysis, but also permits the use of other information. Taken together, the types of evidence listed in the proposed rule would be regarded as sufficient, substantial evidence for approval.

However, it would not be necessary to provide each type of evidence to fulfill the statutory conditions, provided that all statutory conditions are supported by substantial evidence. The more evidence provided, the greater the likelihood of condition fulfillment. The summary of evidence should be drawn from the analyses.

The proposed rule would thus provide general requirements on evidence in recognition that each proposed restriction may require a unique approach. While the proposed rule would provide discretion to the applicant in presenting substantial evidence of the six statutory conditions, it may be helpful for the final rule to provide more specific guidance. It may be desirable for evidence requirements to vary either by the nature of the airport or airport operations or by the type of restriction. The final rule may, therefore, require all or a portion of the evidence identified in proposed subpart D for each restriction proposed on Stage 3 aircraft operations. The public is specifically invited to comment on the following questions:

1. Should a mandatory list of evidence be provided in the rule to demonstrate fulfillment of each statutory condition for approval of the restriction? If so, what should the evidence consist of?

2. Should evidence requirements for approval of restrictions on Stage 3 aircraft vary with either type of airport or type of restriction? If so, what categories should be established to differentiate evidence requirements?

If a restriction of Stage 3 aircraft operations would also affect other classes of aircraft, the analysis must be sufficient for the FAA to understand the entire proposal. However, the FAA is limited to acting only on the Stage 3 component; the Stage 2 component may be implemented 180 days after the public notice required in subpart C.

Airport operators would have the alternative of using 14 CFR part 150 procedures for notice and comment to comply with requirements proposed in subpart D, as long as the analysis of the restriction complies with the requirements of subpart D. Again, as proposed in subpart C, the FAA would encourage use of the part 150 process because it is more comprehensive in that it considers land use compatibility.

As with the Stage 2 review process, proposed subpart D would require each applicant to establish a public docket or similar method to receive and consider comments, and to make then available to interested parties upon request.

Once the comment period has closed, the applicant could submit the proposed restriction to the FAA for approval. Within 30 days of receipt, the FAA will review the application for completeness and will subsequently return an incomplete application to the applicant with identification of any deficiencies. An application that is returned as incomplete may be revised and resubmitted to the FAA if, within 30 days after return of the application, the applicant notifies the FAA of its intent to resubmit a supplemented application. If an applicant declines to complete an application that has been returned twice by the FAA as being incomplete, the FAA (with one exception) will deny the application. The exception is that the FAA may continue to review environmental documents that have been supplemented and resubmitted to the FAA. The initial review for completeness is to ensure that sufficient information has been provided by the applicant to permit a prudent decision on whether the proposed restriction meets the statutory conditions for approval. Based upon this information and other information that the FAA may obtain by inquiry or analysis, the FAA would approve or disapprove a restriction within 180 days of the date of receipt of a complete application. Incomplete applications may be denied by the FAA because of noncompliance with proposed § 161.311, "Application procedure for approval of proposed restriction." In such a case, the FAA would not assume liability for noise damages resulting from a taking as described in section 9306 of the Act.

Restrictions would be approved or disapproved in total, i.e., in whole only, and not in part. The FAA is considering a procedure to allow applicants to propose alternative restrictions and their order of preference. Under this procedure, if the applicant has given public notice and has conducted an analysis of the alternatives in compliance with this subpart, the FAA may approve an alternative in the event that the proposed restriction is disapproved. Thus, applicants would be provided flexibility, and would not have to wait 180 days to propose and receive approval of an alternate restriction. The FAA would not independently approve portions of a restriction and disapprove other portions. Formulation of a noise restriction program incorporating restrictions on Stage 3 aircraft is solely the initiative of the applicant. Comments are invited on this procedure.

A restriction that is approved by the FAA may be subject to a condition that the applicant adhere to commitments and actions described by the applicant in its application for approval of proposed restrictions. The FAA would not, however, impose conditions unrelated to the presentation made by the applicant.

The FAA would notify the applicant of receipt of a complete application and of the date by which a decision will be made. Notice of the proposed restriction would be published in the **Federal Register** to ensure the widest possible notification. Interested parties may file comments on the application within 30 days of publication. The FAA believes that 30 days is adequate notice given that it must approve or disapprove the proposed restriction in 180 days, and that interested parties have already had an opportunity to review the proposal during the initial 45-day notice period provided by the applicant.

The application for a proposed restriction would have to include evidence that the public review process was carried out and a summary of any comments received. The application would also have to include an analysis of the proposed restriction and summary of evidence that the six statutory conditions are met. Finally, the application would have to be accompanied by a draft environmental document that complies with FAA guidelines. The rationale for requiring an environmental document for proposed restrictions and reevaluations as proposed in subparts D and E is addressed in the Environmental Issues section below.

The FAA would test a proposed restriction on Stage 3 aircraft using standards for approval contained in the Airport Noise and Capacity Act of 1990. However, as appropriate, the FAA would also consider the significance of the proposed restriction under the requirements of other laws, including the Federal Aviation Act of 1958 (49 U.S.C. App. 1301 *et seq*), the Aviation Safety and Noise Abatement Act of 1978 (49 U.S.C. App. 2201 *et seq*), the Airport and Airways Improvement Act, as amended (49 U.S.C. App. 2201 *et seq*), and the National Environmental Policy Act of 1969 (49 U.S.C. App. 4321 *et seq*).

If changes are made to the proposed restriction during any part of the process, the applicant would be required to advise interested parties and make any changes to the proposed restriction and its analysis available. If there is a substantial change in the proposed restriction or the analysis after the period of notice and comment, the applicant would be required to publish a new notice. If there is a substantial change in the proposed restriction or the analysis during the 180-day FAA approval process, the applicant would be required to notify the FAA that it is withdrawing its proposal and to publish

a new notice. The FAA would then publish in the **Federal Register** a notice stating that it has terminated review of the proposal.

The FAA proposes a definition of substantial change as including, but not limited to, a more restrictive proposal or a revision that alters the way impacts are apportioned among aircraft operators. The FAA seeks comment on what level of change to a proposed restriction should be required to begin the process again.

Following review of the application, the FAA would issue an order approving or disapproving the proposed restriction and would publish its decision in the **Federal Register** and notify the applicant in writing. The order would include a full statement of the reasons for the FAA's decision. Failure to provide substantial evidence supporting the conditions for approval specified in the Act would be grounds for disapproval of the proposed restriction.

If a proposed restriction on Stage 3 aircraft operations has been approved and the airport operator decides not to implement the restriction, interested parties would have to be notified.

Subpart E of the proposed rule prescribes procedures for reevaluation of restrictions produced in conformance with the requirements of subparts B or D. Subsection 9304(f) of the Act (encompassing both agreements and restrictions) states that the Secretary "may reevaluate any noise restrictions previously agreed to or approved" pertaining to Stage 3 aircraft operations. Subsection 9304(g) authorizes the Secretary to establish procedures for conducting a reevaluation. However, subsection 9304(g) also requires that reevaluations "shall not occur less than two years after a determination [to approve or disapprove the restriction under proposed subpart D] has been made with respect to such restriction." The reevaluation procedures of the Act do not apply to restrictions on Stage 2 aircraft operations.

Subpart E of the proposed rule implements the two provisions of the Act regarding reevaluation. The proposed rule contemplates a three-step procedure for conducting reevaluations of restrictions on Stage 3 aircraft operations. First, an aircraft operator applying for reevaluation would provide evidence to the FAA that the statutory conditions for considering a reevaluation have been met. Second, when the FAA determines that the statutory conditions have been met, the petitioner would be instructed to publish a notice of its request, conduct an analysis, and obtain public comment. (This step would parallel the requirements that would have been placed on the airport operator that originally requested approval of the restriction.) Third, the petitioner would submit to the FAA evidence that one or more of the statutory conditions necessary for approval of restrictions on Stage 3 aircraft have been violated, along with the comments and analysis. The FAA would offer an additional opportunity for comment, and subsequently issue a determination as to whether the restriction should be allowed to continue.

Under subsection 9304(f), only an aircraft operator may request reevaluation of a restriction. The Act provides two initial demonstrations before a reevaluation proceeding may begin. The aircraft operator must be "able to demonstrate that there has been a change in the noise environment of the affected airport." However, the simple fact of a change in the noise environment is not enough. The aircraft operator must also show that "reevaluation * * * of the previously approved or agreed to noise restriction is therefore justified," i.e., the aircraft operator must show a potential relationship between the changed noise environment and a change in the conditions for approval that had been met previously for restrictions on Stage 3 aircraft operations.

Proposed § 161.403 would quantify the amount of change in the noise environment that would ordinarily be required for the FAA to consider instituting a reevaluation proceeding. The petitioner would be expected to show that there had been either a DNL change of 1.5 dB or greater over noncompatible land use, or a change of 17 percent or greater in the noncompatible land use within the airport noise study area. That is, the FAA would look at whether there had been a significant change in either noise levels or land use. The 1.5 dB noise change is derived from FAA guidelines for implementation of the National Environmental Policy Act of 1969 (NEPA) that identify a 1.5 dB increase as significant. Similarly, 14 CFR part 150 requires noise exposure maps to be revised when such an increase has occurred. Since a 1.5 dB DNL change increases a noise contour area by approximately 17 percent, a 17 percent change in noncompatible land use is proposed as an alternate threshold. As proposed, this rule would consider either an increase or decrease in noise. An increase in noise could indicate that a restriction is not reasonably related to relieving a noise problem, or that the benefits are less than previously estimated. A decrease in noise could indicate a restriction is no longer needed to resolve a noise problem. The FAA invites comments on whether the proposed quantitative criteria are appropriate.

It should be noted that the FAA does not intend that these thresholds be abolute barriers in considering an application for reevaluation. An aircraft operator may submit reasons why a noise change that, while not meeting these standards, nevertheless justifies the reevaluation, and such a requests would be considered on a case-by-case basis.

An aircraft operator would also have to show the connection between the alleged noise change and the need for reevaluation. In particular, the aircraft operator would have to demonstrate the likelihood that the restriction would no longer meet one or more of the statutory conditions for approval of a restriction. These statutorily mandated conditions are set forth in proposed § 161.317. The aircraft operator would be expected to refer to any previous analysis relevant to the challenged restrictions submitted under proposed subpart D. Comments are requested on the extent to which such references should be mandatory and what amount of access should be provided to models and data used in the application for approval under proposed subpart D.

An aircraft operator would submit this information to the FAA, along with a concise description of the restriction, its effective date, a copy of the full text, and other identifying information set forth in proposed § 161.405. In addition, the aircraft operator would be required to show that it had attempted to resolve the dispute at the local level with the airport operator and other interested parties. While a matter of discretion, the FAA believes that aircraft operators should make an effort to achieve a mutually agreeable solution to a dispute before requesting the FAA to overturn a restriction. If, following review of these submissions, the FAA determines that reevaluation is not justified, it would notify the aircraft operator and the affected airport operator and indicate the reasons for this determination.

If the reevaluation appears to be justified, however, the FAA would direct the petitioner to publish a notice of the reevaluation and to notify directly specified classes of persons expected to have an interest in the proceeding. The published notice and direct notification procedures would be essentially the same as those proposed for the initial proponent of a restriction. The public comment period would have to be at least 45 days, and the aircraft operator

would have to notify parties and extend the comment period if it changes the analysis during or after the comment period. The FAA invities comments on whether the proposed 45-day comment period is appropriate.

At the conclusion of the comment period, the aircraft operator would then submit to the FAA its analyses and evidence that the public had been given adequate notice and opportunity to comment (including a summary of the comments received). The FAA would then provide for an additonal 45-day comment period, during which time the public could submit comments directly to the FAA. This comment period is longer than that provided in subpart D because the FAA is not under a statutory 180-day limit for reevaluations. The FAA would specifically solicit comments from the airport operator during this period, and may confer with the aircraft operator, the airport operator, or other parties to gather additional information. The FAA may also hold an informal meeting to gather additional information.

The FAA would consider the petition for reevaluation under the same conditions as the initial request for approval of a restriction. That is, the proponent, in this case the aircraft operator, would be expected to carry the burden of demonstrating by substantial evidence that the restriction did not meet the statutory conditions for approval. Because the FAA recognizes that airport and aircraft operators both have a need for stability and certainty in planning operations, restrictions should not be lightly imposed or overturned.

There would be one important difference, however, between the burden on the initial proponent and the burden on the applicant for reevaluation. By the terms of the Act, the airport operator imposing a restriction must meet all six statutory conditions for approval. Because a restriction does not comply with the Act unless it meets all six conditions, it follows that an aircraft operator seeking reevaluation would need only demonstrate, by substantial evidence, that the restriction now failed to meet any one of those conditions.

It should be noted here that, while subsection 9304(f) of the Act clearly refers to reevaluation of both restrictions and agreements, the two-year minimum waiting period for a reevaluation described in subsection 9304(g) refers only to restrictions. However, the rule proposes a similar two-year minimum on Stage 3 restrictions contained in agreements. The FAA believes that the underlying rationale of a stable noise requirement also supports this two-year waiting period. In any event, few, if any, petitions under this subpart are expected with respect to agreements.

If the FAA concludes its reevaluation with a determination that the restriction still meets the conditions for approval, the FAA will terminate the proceeding and take no further action. But if a restriction is found to no longer meet the statutory conditions, the airport operator would be required to rescind the restriction. Failure to do so would subject the airport operator to the sanctions described in proposed subpart F, discussed below, plus possible administrative action by the FAA and legal action by the United States. Where the improper restriction is contained in an agreement, the agreement could not be enforced with respect to Stage 3 operations. It should be noted that the FAA's action would be prompted only by the airport's enforcement of the disapproved restriction. The FAA actions would not affect any contractural obligations contained in the agreement.

Subpart F speaks to sanctions imposed for noncompliance with the rules: limitations that are mandated by the Act on Airport Improvement Program Funds and Passenger Facility Charges (PEC). The statute requires that AIP funds and PFC authority be terminated upon the airport operator's receipt of notice of a violation of the requirements of the rule. The FAA interprets sanctions for noncompliance as applicable to all agreements and restrictions under proposed part 161.

Section 9304 of the Act states:

> Sponsors of facilities operating under airport noise or access restrictions on Stage 3 aircraft operations shall not be eligible to impose a passenger facility charge under section 1113(e) of the Federal Aviation Act of 1958 and shall not be eligible for grants authorized by section 505 of the Airport and Airway Improvement Act of 1982 after the 90th day following the date on which the Secretary issues a final rule under subsection 9304(a) of this Act, unless such restrictions have been agreed to by the airport proprietor and aircraft operators or the Secretary has approved the restrictions under this subtitle or the restrictions have been rescinded.

Similarly, Section 9307 of the Act states:

> Under no conditions shall any airport receive revenues under the provisions of the Airport and Airway Improvement Act of 1982 or impose or collect a passenger facility charge under section 1113(e) of the Federal Aviation Act of 1958 unless the Secretary assures that the airport is not imposing any noise or access restrictions not in compliance with this subtitle.

Although the FAA assumes that such violations will occur only rarely, if ever, proposed subpart F delineates procedures to implement the statutory requirements. The procedures would apply when the FAA obtains evidence that a noise or access restriction is being imposed by an airport operator or a "public agency" in violation of the final rule adopted in this rulemaking. (In Docket 26385, the FAA has issued an NPRM titled Passenger Facility Charges, proposed 14 CFR part 158, which would define a "public agency" as "a State or any agency of one or more States, a municipality or other political subdivision of a State, a tax-supported organization, or an Indian tribe or pueblo that: (1) Controls a commercial service airport; and (2) is legally, financially, and otherwise able to assume and carry out the assurances in an application for PFC authority and any condition imposed by the Administrator on approval." See 56 FR 4678, February 5, 1991. Comments on the proposed definition should be directed to the Passenger Facility Charges docket.)

The FAA would give written notice of the apparent violation to the airport operator or public agency, which would then have 30 days following receipt of the notice to provide satisfactory evidence that it is in compliance with this part. Such evidence could include, for example, a written certification that the alleged restriction is not being imposed at the airport, or evidence that the restriction was approved by the FAA under the provisions of subpart D of the proposed rule or was agreed to under Subpart B.

Once the 30-day reply period has expired without satisfactory evidence of compliance, the FAA would notify the airport operator or public agency that it intends to terminate Airport Improvement Program (AIP) grants and rescind approval of any authority to collect a Passenger Facility Charge (PFC). The FAA would also publish a notice in the **Federal Register** and invite public comment. Following review of the comments, if any, the FAA would issue a final determination.

If the FAA determines to terminate AIP funds and PFC authority, there will be no further reimbursement to the airport operator for costs incurred prior to the notice and additional AIP grants would be discontinued immediately upon notice. The authority to collect PFC's would be terminated within 30 days following the FAA's determination.

It should be noted that the FAA's determination that an airport operator or public agency was imposing a noise

or access restriction in violation of this rule would be separate from any finding of a violation of the grant assurances required under the Airport and Airway Improvement Act (AAIA). A violation of the grant assurances would be investigated and acted upon under applicable provisions of the AAIA. However, any evidence developed in an action under this subpart would, of course, also be relevant with regard to a finding of a violation of the AAIA grant assurances.

Commenters on this subpart are requested to address the following questions, in addition to their other concerns. After further consideration by the FAA and review of the comments received, the final rule may be modified significantly from this proposal.

1. Although the prohibition on eligibility for AIP funds and collection of PFC's is required by the Act, and the FAA expects that proceedings under this subpart will be rare, the agency recognizes that any risk of withdrawal of funding could be viewed adversely by the capital markets. Is there any way for the FAA to minimize this problem consistent with our statutory obligation?

2. Note that the Act does not provide for, and the FAA will not adopt in this rulemaking, the use of trial-type procedures under subpart F. Nevertheless, comments are invited on the feasibility of making the necessary findings on the documentary record.

3. Are the proposed notice requirements appropriate? Is there a need for a public comment period in addition to the time allowed for the airport operator or public agency to respond to the alleged violation?

4. Should authority to impose a PFC be suspended immediately following a determination of a violation, just as additional AIP funds would be suspended immediately, or is 30 days (or some other period) necessary to allow air carriers to make an orderly adjustment? What should become of PFC funds received by the airport following an FAA determination of a violation, but prior to the end of the 30-day period?

Postponement Requested

Because of the statutorily imposed short timeframe for finalization of this rulemaking, the FAA requests airport operators now considering restrictions to postpone further action until the FAA issues a final rule. With certain specific exceptions, the Act governs restrictions on Stage 2 aircraft operations that are proposed after October 1, 1990, and restrictions on Stage 3 aircraft operations that become effective after that date. Not included in these statutory exceptions are restrictions proposed or adopted during the federal rulemaking process. Thus, airport operators who proceed to adopt restrictions before the final rule is adopted, and without complying with the Act, risk the consequences for violation specified in the Act.

Environmental Issues

Analysis Requirements for Restrictions on Stage 3 Aircraft Operations and Their Reevaluation. Subparts D and E require Federal decisions involving the approval or disapproval of a proposed restriction on Stage 3 aircraft operations or the reevaluation of a restriction on Stage 3 aircraft, respectively. Moreover, the Federal decisions on the proposals (i.e., the restriction or reevaluation of the restriction) are subject to the requirements of the National Environmental Policy Act (NEPA). In accordance with FAA environmental procedures implementing NEPA with regard to each proposal, the FAA must either (1) determine that a proposal is categorically excluded from the preparation of an environmental document because it neither individually nor cumulatively has a significant effect on the environment; or (2) prepare an environmental impact statement or a finding of no significant impact, as appropriate.

The FAA does not anticipate that proposals submitted under subparts D and E will have a significant environmental impact, although there may be some extraordinary circumstances in which a significant impact could occur. At this time, the FAA does not have sufficient data on which to base a categorical exclusion for these proposals. Therefore, there is a requirement in both proposed subparts D and E for the applicant to submit to the FAA a draft environmental document complying with FAA's environmental guidelines, together with the applicant's other analyses. The FAA will independently evaluate this draft environmental document and use its information (supplemented as necessary by the FAA) to prepare a finding of no significant impact or, possibly, an environmental impact statement before issuing a determination on the applicant's proposal.

The FAA specifically invites comments on the appropriateness of requiring applicants to submit draft environmental documents, and seeks response to the following questions:

1. What environmental considerations other than noise should be analysed for proposals submitted under subparts D or E?

2. What data is available with respect to whether noise and any other impacts resulting from such proposals may reach significant levels as defined in FAA Order 5050.4A, Airport Environmental Handbook? (A copy of this order is available in the docket.)

3. Is there any data to support categorical exclusion of these types of proposals from FAA NEPA requirements?

4. Are there any alternative procedures for conducting an environmental evaluation of these proposals to ensure compliance with NEPA other than through those in existing FAA environmental orders?

Environmental Analysis of the Proposed Rule

This proposed rulemaking is in response to section 9304 of the Airport Noise and Capacity Act of 1990. The Act directs the FAA to establish by regulation a national program for reviewing airport noise and access restrictions on operations of Stage 2 and Stage 3 aircraft, including the provision for adequate public notice and comment opportunities on such restrictions. The Act sets forth requirements specific to Stage 2 and Stage 3 restrictions that must be met before these restrictions become effective; mandates FAA review and approval or disapproval of Stage 3 restrictions according to specific criteria; establishes criteria for reevaluation of Stage 3 restrictions; delineates a number of limitations on the applicability of the Act; and provides that sponsors of facilities implementing Stage 3 restrictions that fail to comply with the Act shall not be eligible to impose a Passenger Facility Charge or receive an Airport Improvement Program grant. The FAA's discretion is very limited with regard to implementing the requirements of the Act.

The program that the FAA is directed to establish to review proposed restrictions on Stage 2 aircraft is procedural in nature, not substantive. The Act requires an airport operator to publish notice of a proposed restriction on Stage 2 aircraft 180 days before it becomes effective and to provide an opportunity for public comment. The Act provides, in relevant part, that no noise or access restriction shall be effective unless the airport operator publishes the proposed noise or access restriction, and prepares and makes available for public comment a cost/benefit analysis and certain information about alternatives at least 180 days before the effective date of the restriction. The greatest discretion afforded the FAA with respect to review

of Stage 2 restrictions is whether to exempt Stage 2 aircraft of less than 75,000 pounds from the procedural scheme established for restrictions on heavier Stage 2 aircraft.

In contrast to proposed restrictions on Stage 2 aircraft, the statute authorizes the FAA to implement a review of proposed Stage 3 restrictions that is substantive in nature, not merely procedural. However, even here FAA authority is circumscribed by statutory dictate prescribing conditions warranting approval, designating a time frame for a decision, and limiting the scope-of-review authority. The Act directs the FAA to approve or disapprove proposed restrictions on Stage 3 aircraft within 180 days of receipt. It mandates that no airport noise or access restriction on Stage 3 aircraft shall be effective unless it has been agreed to by the airport operator and all aircraft operators, or has been submitted to and approved by the FAA pursuant to a request for approval. Approval may be given only if the applicant has demonstrated substantial evidence that the six statutorily specified conditions have been met.

The Act also grants the FAA substantive authority to reevaluate Stage 3 restrictions. However, here as well, the FAA's discretion is limited by statute. Noise restrictions agreed to by the airport operator and aircraft operators, or approved by the FAA, are subject to reevaluation only where there has been a change in the noise environment. Those approved by the FAA are not subject to reevaluation for 2 years. By these actions, the Congress has given the FAA very limited discretion to approve or reevaluate a proposed restriction on Stage 3 aircraft operations.

Significantly, the FAA has no discretion to determine when to apply the requirements or whether to apply requirements to all use restrictions. The Act sets specific dates for applicability of its requirements and carves out specific exemptions from those requirements.

The only discretion left to the FAA under the Act largely concerns implementation. The FAA has latitude to decide: (1) How to require the airport operator to publish notice of, and to accept public comments for, restrictions on Stage 2 aircraft operations; (2) what procedures, if any, to adopt for agreements; (3) what procedures to adopt for Federal approval or disapproval of a proposed restriction on Stage 3 aircraft operations; and (4) what procedure to adopt for reevaluation of previously approved restrictions. The FAA considered, and continues to consider, alternative methods of implementation as described in this preamble.

Because the statutory framework severely limits the range of reasonable alternatives to those chiefly involving implementation, there is no significant range of alternatives from which to choose, and none of the alternatives within the FAA's discretion are likely to have a significant effect on the quality of the human environment. In the new substantive area of FAA authority and discretion—approval or disapproval, and reevaluation of restrictions on Stage 3 aircraft operations—the FAA proposes to comply with NEPA with respect to each decision.

This proposed rule contains procedures for complying with the Act's specific requirements. These procedures are not anticipated to have a significant effect on the quality of the human environment. Prior to issuing a final rule, the FAA will complete a review of the environmental impacts associated with rule compliance in accordance with Department of Transportation "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1D). Comments relating to the environmental impacts that might result from adopting this rule are invited.

A discussion of the application of NEPA to FAA determinations relating to approval or disapproval of restrictions and reevaluation of previously approved restrictions on Stage 3 aircraft operations are discussed above.

Noise Liability, Land Use, and Related Grant Assurances

Section 9306 of the Act provides that, in the event that a proposed restriction on Stage 3 aircraft is disapproved by the Federal Government, the Federal Government shall assume liability for noise damages "only" to the extent that a taking has occurred as a "direct result" of that disapproval. In order to make a determination of whether such liability can attach to a particular diapproval action, a number of factors must be considered, including an assessment of whether that airport operator has made a reasonable effort on its own behalf to assure land use compatibility in the vicinity of the airport prior to proposing restrictions on the operation of Stage 3 aircraft. Such an inquiry is necessary in order to assure that the federal liability addressed by section 9306 is limited to compensation only for takings that directly result from its disapproval of Stage 3 aircraft restrictions. Since Congress did not alter the historic responsibility and liability of airport operators for noise damage, the Department has the obligation to insure that section 9306 is not used to compensate for inadequate land use planning, a failure to attempt to achieve land use compatibility, or a failure to utilize nonaircraft alternative measures available to an airport operator.

Section 9304 sets forth various conditions that a proposed noise restriction must meet before it may be approved by the Secretary, including a determination that the noise restriction is reasonable, nonarbitrary and nondiscriminatory, and does not constitute an undue burden on the national aviation system. The FAA proposes to require an applicant to include in its application for approval of a Stage 3 restriction a description of the nonaircraft alternative measures that have been employed to achieve land use compatibility with normal airport operations. In particular, FAA would require a description of measures proposed in submittals under 14 CFR part 150 and whether they have been carried out. "Land use" measures are generally within local control and this proposal is not intended to affect the traditional local responsibility for such measures.

Thus, neither airport operators, local jurisdictions nor other affected persons should interpret sections 9304(d)(2) and 9306 as an invitation to relax or delay responsible programs for compatible land use. In particular, the FAA encourages airport operators to take advantage of the noise compatibility program that is available under the Aviation Safety and Noise Abatement Act of 1979, 42 U.S.C., App. 2101, *et seq.*, and the implementing provisions of 14 CFR part 150. Similarly, airport operators are encouraged to review their grant agreements with the FAA to ensure that they are in compliance with the terms of those agreements, including particularly the commitment to take appropriate action, to the extent reasonable, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities that are compatible with normal airport operations. These obligations are set forth in section 511(a)(5) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2210(a)(5)).

Paperwork Reduction Act

Paperwork and recordkeeping requirements will be submitted to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Comments on the requirements should be submitted to the Office of Information and Regulatory Affairs (OMB), New Executive Office

Building, room 3001, Washington, DC 20503; attention: FAA Desk Officer (telephone (202) 395–7340). A copy must be submitted to the FAA docket.

Regulatory Evaluation Summary

This section summarizes the Initial Regulatory Evaluation to the proposed rule to establish a program for reviewing airport noise and access restrictions on operations of Stage 2 and Stage 3 aircraft.

Executive Order 12291, issued February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an effect on the economy of $100 million or more; a major increase in costs or prices for customers or for individual industries, government entities or regions; or a significant adverse effect on competition, employment, or other significant determinants of economic growth.

The notice, review, and approval procedures set forth in the proposed rule are intended to carry out the mandates of section 9304 of the "Airport Noise and Capacity Act of 1990" (the Act). Because the Act requires the establishment of the program described in the proposed rule, it is debatable whether the economic effects of the proposed rule can or should be separated from those of the Act. Thus, this evaluation focuses primarily on the procedural aspects of the program without distinguishing those solely associated with the proposed rule from other potential economic impacts that may be attributable to the Act. In some portions of the proposed rule, especially the subpart that deals with agreements between airport and aircraft operators, the proposed procedures are believed to provide savings to program participants by avoiding alternative, more complex procedures that might otherwise be necessary to conform to the requirements of the Act.

The notice, review, and approval procedures in this NPRM are not expected to have an overall effect on the economy in excess of $100 million. The only economic costs that would be imposed stem from the costs associated with providing public notice of a proposal and of conducting the analyses required by this rule. These costs will be incurred by the airport operator or by an aircraft operator. An airport operator would incur these costs only if it takes an initiative that would bring itself within the purview of the rule by deciding to impose a use restriction and can forego all costs associated with the rule by continuing business as usual and not deciding to restrict aircraft operations. The total cost depends on the number and type of restrictions that an airport operator would want to impose in any year. The total anticipated benefits also would depend on the number and type of access and noise restrictions that might be implemented by an airport operator in any year. Based on the following analysis of costs and benefits, the FAA has determined that the proposed rule is not a major rule.

The proposed rule would require public notice and a comment period for airport noise and access agreements and for proposed airport restrictions on Stage 2 and Stage 3 aircraft operations. An analysis would be required for proposed mandatory restrictions. A proposed restriction on Stage 3 aircraft operations would require FAA approval as a condition for continued eligibility of an airport operator to receive federal Airport Improvement Program grants and to collect passenger facility charges. An aircraft operator may request the reevaluation of a restriction on Stage 3 aircraft operations by demonstrating to the FAA that there has been a significant change in the airport noise environment. If a reevaluation is deemed justified by the FAA, the aircraft operator may, if it chooses, then publish a notice of the reevaluation and provide an analysis that reevaluates the restriction.

Local airport restrictions that are the subject of the proposed rule could: (1) Have significant effects on individual air carriers, other aircraft operators, and intercarrier competition; (2) cause losses in market value of aircraft that would be excluded as a result of an airport restriction; (3) raise air fares; and (4) affect real estate values surrounding airports that impose restrictions on operations, for instance, by raising the value of noise-impacted residential properties as a result of reducing noise exposure.

The potential benefits of the proposed procedures arise from mitigating some of the adverse effects of Stage 2 and Stage 3 aircraft restrictions that are excessive, suboptimal, or restrict competition, or are an undue burden on interstate or foreign commerce or the national aviation system. A reasonable analysis of a proposed restriction would include the major benefits and costs that affect parties involved. In most cases, a major focus of this analysis would be whether the potential benefits from reduced noise exposure near an airport could be significant enough to offset the costs that may be imposed on air commerce as a result of proposed restrictions. Benefits and costs of compliance with the proposed rule are expected to vary significantly among airports that will be proposing restrictions that are subject to the proposed notice, analysis, and review requirements. Thus, the effects of the proposed procedural requirements are treated only in a qualitative manner in this draft regulatory analysis. Some quantitative estimates of the potential benefits of applying the proposed rule may be provided in the final rule. Commenters are invited to provide quantitative estimates of such benefits (which may be in the form of avoided costs) expected from this proposed rule due to the avoidance of, or greater efficiency of, local airport restrictions on the operation of Stage 2 and Stage 3 aircraft.

Costs Associated With Requirements for Public Notice and Analysis

Cost of Public Notice Requirement

Notice of all agreements and proposed restrictions would be provided to: (1) Aircraft operators serving or intending to serve the affected airport; (2) the FAA and other affected Federal agencies; and (3) other governmental units within the airport noise study area. The incremental cost for the required notifications is estimated to vary from $15,000 to as much as $45,000 (in the case of a complex restriction) per airport for each notification. Some airports would incur little additional cost to implement the public notice requirement, because they would have provided the public notice and solicited comments on noise restrictions even in the absence of the proposed rule. If notice were not normally given prior to actions equivalent to those covered in the proposed rule, there would be some incremental cost for public notice.

Publication of a single notice in a major national business newspaper is estimated to cost approximately $600 per column inch. Thus, if a notice covers 12-column inches, publication costs for reaching a nationwide audience would be approximately $7,200. Similar notices are estimated to cost about $1,000 in a major regional paper, and could range from $1,500 to $4,000 for publication in an aviation trade journal. If a notice were put in a major local newspaper, a trade journal, and a major national business newspaper, publication costs per notice could range up to $12,000. If the cost of direct notification to 100

aircraft operators (including air carriers) and jurisdictions is $20 per letter, with enclosure, direct notification costs would be $2,000. The cost of preparing a notice for publication depends on is complexity and impact. A notice for a very simple restriction with very limited impact may cost $1,000 or less (several hours of professional and clerical time). In these simple cases, the total incremental notification costs could average $15,000 per implementation or modification thereof. However, if the restrictions is complex and an analysis reveals numerous effects, the preparation of the notice itself may require substantial professional staff attention to draft the notice per se (two months of professional and clerical time). These staff costs are assumed to be on the order of $20,000. Review of comments and revisions may result in further costs of $10,000. Thus, the total cost of notice and comment for a proposed complex restriction (exclusive of analysis cost described below) is estimated to be up to $45,000. If 100 airports in the U.S. were to implement restrictions on Stage 2 and Stage 3 aircraft operations or modifications thereto, the total notification costs (exclusive of analysis cost described below) could range up to approximately $1.5 million for simple restrictions or $5 million for complex restrictions.

Cost of Analysis

Analysis of airport noise, including the mapping of projected noise levels and associated demographic projections, and analysis of the benefits and costs of restricting aircraft operations at airports, have been performed in the past. Similar analyses are prepared in whole or in part in compliance with 14 CFR part 150, for airport development and master planning, and in conjunction with the solicitation of airport finance. Thus, much information required to fulfill the analysis requirements of proposed subparts C and D probably already exists as a result of current airport administrative and planning procedures. Further, if additional information is needed, the required skills have been developed and the analysis can be performed by the airport staff or through existing relationships with consultants. The skills required to perform the analyses can also be readily learned by individuals with training in engineering or physical sciences and economics or finance.

The incremental cost imposed by the proposed rule for analyzing a set of proposed noise and access restrictions may vary from no cost to $200,000 per airport. Because airports are given broad discretion, costs can be kept low in many cases. Some airports already prepare substantial analyses associated with potential noise restrictions and alternatives.

Costs associated with environmental analyses and documents are assumed to arise because of the National Environmental Policy Act (NEPA) and existing regulations, i.e., they are not the result of requirements that would be imposed under this proposed rule. If the costs of these analyses would occur in the absence of the proposed rule, they should be excluded from these estimates. If the environmental analysis costs are included in the estimate, an additional nominal value of $100,000 to $150,000 per analyzed restriction may be assumed.

(By way of background, it is noted that current submissions in response to 14 CFR Part 150, Airport Noise Compatibility Planning include similar analyses of restrictions, but focus more extensively on noise benefits of restrictions as compared to nonrestrictive alternatives. Part 150 analyses have been prepared using federal grants ranging from $50,000 to $300,000 per submission, with the majority of analyses ranging from $90,000 to $150,000. Part 150 study costs are considered analogous to the analysis costs that would be imposed by this NPRM.)

If 50 airports were to prepare analyses, including environmental analyses, solely in response to subpart D of the proposed rule, which deals with restrictions on Stage 3 aircraft operations, the total incremental cost of analyses attributable to the proposed rule could be as high as $15 million to $18 million. (Note that an analysis is not required for notices of agreements.) In the event that 100 analyses were prepared in response to the proposed rule, this cost could be as high as $30 million to $35 million. If environmental analyses are not included in the costs attributed to the proposed rule, costs for 50 and 100 analyses would range up to $10 million and $20 million, respectively. Costs for federal review of 50 to 100 analyses are expected to be on the order of $1 million to $2 million. Costs are expected to vary with the level of operations at affected airports and the extensiveness and complexity of the proposed restriction. Comments relating to the costs of analyses are specifically invited.

Benefits of Applying the Proposed Regulations of Proposed Restrictions on Aircraft Operations

Agreements (Subpart B).

Subpart B applies to airport noise or access restrictions on Stage 2 or Stage 3 aircraft that are agreed to by the airport operator and all aircraft operators. New entrant aircraft operators that have applied to serve the airport within 180 days of the effective date of the restriction and have submitted a plan of operations to the airport operator would be included in these agreements. Potential new entrants would be given 45 days to apply to the airport operator to be a party to the agreement. An analysis of an agreement is optional.

An agreement can result in positive net benefits to affected interest groups considered as a whole, and very likely to each of the affected interest groups (although not necessarily to all members of such groups). This would be the case as long as all potential entrants that wish to service an airport are notified and the airport operator adequately represents both the interests of the local aviation/passenger community and persons who may be adversely affected by aircraft noise.

The use of agreements may help airport operators by reducing the costs that they would incur in order to implement proposed restrictions on aircraft operations. Public notice would provide an opportunity for those with an interest in starting airport operations to become parties to an agreement. The notice, with this new-entrant provision, tries to open up agreements to parties beyond those currently serving an airport, but stops short of the needless costs that would be associated with identifying "all" aircraft operators, whether or not they have an interest in operation at the airport in the reasonably foreseeable future.

It is noted that cost savings would occur through the avoidance of what is likely to be a costlier process including analysis requirements that would be involved in attempting to restrict aircraft operations through subparts C and D, as outlined below. The provision for agreements would formalize a procedure under which communities and aircraft operators can efficiently reach agreement on measures to mitigate aircraft noise problems that the affected parties find mutually acceptable. As drafted, the proposed rule would permit restrictions on Stage 2 aircraft to be handled through the less costly means of agreements under subpart B. Additionally, the use of such agreements can be expected to facilitate the

handling of local environmental concerns by minimizing federal involvement in the process.

Further, it is possible that the public notice required by Subpart B may itself produce additional benefits, in part by reducing the likelihood of a number of possible adverse effects. One potential concern is a situation in which an agreement on operations at an airport has the effect of excluding improved air carrier service when such service might provide an overall increase in net benefits to current and potential users of air transportation in the area served by the airport. Current poviders of air service may have an economic incentive to seek, through agreements, to prevent the entry of additional competitive providers of air service. Public notice can help to mitigate potential adverse effects by improving the chances for potential entrants to service at an airport to protect themselves from undesirable constraints on their future activities. For instance, a noise budget can have the effect of making it more difficult for new entrants (new competition) to enter service at a particular airport. By preserving and enhancing competition, the proposed rule may benefit air travelers by lower air fares and/or increased service.

It is also possible that voluntary agreements may have the effect of regulating rates or services. Although this is prohibited by section 105 of the Federal Aviation Act of 1958, agreements may achieve these objectives indirectly. For instance, because aircraft have varying ranges, voluntary agreements on the type of aircraft that may be used at an airport can have the indirect effect of regulating the price and availability of air carrier service. Agreements that, for example, restrict the passenger-carrying capacity of aircraft using an airport could have the effect of excluding the aircraft of potential competitors that are larger, quieter, and have a longer range.

The public notice may not only inform interested parties, but may also stimulate those adversely affected to protect their interests by taking part in the negotiations that lead to the agreement or by seeking redress through other political or judicial processes. For instance, local companies adversely affected by potential restrictions or aircraft operators that wish more freedom, for instance, in airport operating hours, may object to terms of an agreement that they perceive as objectionable. Thus, the proposed rule may ultimately improve the efficiency of air commerce, the local economy, and the quality of life.

Although the Federal government may take action to mitigate the effects of exclusionary agreements under other statutes, it has no power under the Act, or the proposed rules derived from it, to grant relief to, e.g., the customers of air carriers who may experience high ticket prices that result from de facto cartelization of an airport. Remedies would be obtained under federal antitrust laws and the terms of airport development grant agreements.

Requirements for Stage 2 Restrictions (Subpart C)

Subpart C would require analysis and notice of new noise or access restrictions that are proposed for Stage 2 aircraft after October 1, 1990. These requirements would also apply to amended restrictions that become effective after the date of the Act if they further limit Stage 2 aircraft operations or affect aircraft safety. As indicated in the discussion of the preceding subpart, the public notice provided to affected parties under subpart C is expected to facilitate the protection of these parties' interests by informing them of the impacts of proposed restrictions. Adversely affected parties can then seek remedies through political or judicial means.

Benefits associated with the notice, analysis, and 180-day waiting period include assuring that: (1) There is wide advance notification of potentially affected parties; (2) the airport operator and others are aware of the full ramifications of proposed restrictions, including anticipated costs and benefits; (3) data errors in estimating costs and benefits have a chance to be rectified and appropriate changes made in the proposed restrictions; (4) objections of affected parties and the FAA may lead airport operators to modify objective provisions of a restriction; (5) the Federal government and other affected parties have a chance to make a case against objectionable restrictions in court before the restriction is imposed; and (6) affected parties have a reasonable amount of time to accommodate their operations to a restriction before it goes into effect.

Proposed subpart C includes requirements for an analysis of the anticipated costs and benefits of the proposed noise access restriction, a description of alternative measures considered that do not involve aircraft restrictions, and comparative analyses of benefits and costs of these measures. The use of specified noise measurement systems and accepted economic methodology are required. Components may include, as appropriate, data and projections on airport activity, estimates of land use, noise, and other conditions, as well as the effects of the proposed restriction on noise contours, population, aircraft operations, and safety implications, if any. The analyses may include the examination of continuing service under the restriction, the effects of discontinued aircraft operations, and the effect of nonaircraft alternatives or nonaircraft components of the restriction. The cost analysis may include data and projections on additional aircraft capital costs; other incremental costs; and decreases in carrier and other profits, safety, and consumer and producer surpluses.

Stage 2 aircraft tend to be less expensive to acquire or lease. For this reason, those aircraft have been favored by new airline companies starting operations. Restrictions on the operation of Stage 2 aircraft, therefore, may have the effect on inhibiting market competition from new entrants.

Restrictions on aircraft operations at a single airport that is an airline's major hub may or may not have a significant impact on a particular aircraft operator depending on whether its equipment can be moved to alternate routes or sold without incurring a significant loss. Simultaneous restrictions at a significant number of airports may force premature retirement of affected aircraft, including their sale at reduced prices, thereby imposing losses on the owners of such aircraft. Thus, a single airport's restrictions should also be viewed in the context of conditions existing in the national airport system. As noted, analyses under proposed subpart C may include estimates of real estate and other property values, health costs (if any), other quality of life effects, and airport revenues, as well as other measures of benefits and costs. However, the airport operator that proposes restrictions is given discretion with respect to the elements contained in the analysis so long as the analysis is consistent with the general requirements of the Act.

The imposition of major premature restrictions on Stage 2 aircraft operations at an airport that acts as a major hub for a carrier that is highly dependent on these aircraft may also impose significant adverse effects on air carriers and passengers. These effects would be in the form of reduced service because of less air carrier competition, and likely higher air fares. If air carriers cannot find alternative uses for aircraft that are barred by the restrictions, the air carrier would experience a loss of revenue and profit. The effects on passengers may include substantial burdens in the form of the cost of time

consumed through delays or inconvenient air carrier schedules. It should be noted that, in analyses of air transport operations, the delay costs for air travelers may be a high as the air carriers' costs for operating the delayed aircraft. Ther merit of a particular proposed restriction on Stage 2 aircraft operations would depend on whether benefits (perhaps measured by a projected increase in residential property values) are greater than the sum of costs imposed on air commerce (including such elements as passenger delay costs together with aircraft operating and capital costs.)

Notice, Review, and Approval Requirements for Stage 3 Restrictions (Subpart D)

This proposed subpart would apply to airport noise or access restrictions on Stage 3 aircraft operations that first become effective after October 1, 1990. With certain limited exceptions detailed in the statute, all proposed restrictions on Stage 3 aircraft, other than those agreed to by the airport operator and aircraft operators, would be subject to this proposed subpart and must be reviewed and approved by the FAA before they become effective. The restrictions can be approved only if there is substantial evidence that they: (1) are reasonable, nonarbitrary, and nondiscriminatory; (2) do not create an undue burden on interstate or foreign commerce; (3) maintain safe and efficient utilization of navigable airspace; (4) do not conflict with any existing Federal statute or regulation; (5) have been given an adequate opportunity for public comment; and (6) do not create an undue burden on the national aviation system. The Act mandates sanctions against airport operators that implement restrictions on Stage 3 aircraft operations that have not been agreed to or approved by the FAA in conformance with the proposed rule.

As was noted in the discussion of proposed subpart C above, restrictions at either a single major hub airport or at a significant number of airports may reduce the efficient use of an airline's fleet, thereby imposing major losses on the owners of such aircraft. This subpart deals with proposed restrictions on Stage 3 aircraft, which represent state-of-the-art noise control and are significantly newer than the Stage 2 aircraft that they are intended to replace. Restrictions on aircraft that fall under this subpart can be expected to result in losses to aircraft operators that are potentially much larger than would comparable restrictions on Stage 2 aircraft alone. Restrictions that result in the suboptimum use of substantially new aircraft could constitute an undue burden on commerce and the national aviation system by preventing aircraft operators from recouping through revenues the substantial cost of their investment in aircraft (a new Stage 3 aircraft may cost between $50 million and $120 million). Stage 3 aircraft are likely to have higher market values and lower operating costs than otherwise comparable State 2 aircraft. Thus, the earnings foregone by a carrier that finds that it is unable to put a Stage 3 aircraft to its most profitable use are likely to be larger than the lost earnings that would result from a comparable restriction on a Stage 2 aircraft.

Restrictions on Stage 3 aircraft are also likely to impose significantly higher costs on air travelers than would comparable restrictions on Stage 2 aircraft. If Stage 2 aircraft are restricted at an airport, it is likely that they will, to some extent, be replaced with Stage 3 aircraft that provide comparable or better passenger service. Any restrictions on Stage 3 aircraft have the effect of limiting total aircraft operations at an airport because an airport operator is unlikely to attempt to restrict Stage 3 operations unless Stage 2 operations have already been, or are being simultaneously, restricted. With a resulting general reduction in air service at an airport, passenger delay costs will be imposed as a result of less convenient schedules for passengers for whom the airport is an origin or destination and more waiting time if the airport is a hub at which passengers transfer between airplanes. As with Stage 2 aircraft, simultaneous restrictions on Stage 3 aircraft at a number of airports can have significantly greater adverse impacts on both aircraft operators and passengers than would restrictions at a single airport. The greater public and Federal examination of proposed restrictions on Stage 3 aircraft (as compared to Stage 2) is justified, in large part, by the greater potential for imposing costs on the national aviation system that do not have equal or better benefits.

Reevaluation of Restrictions on Stage 3 Aircraft Operations (Subpart E)

Reevaluation may be requested by an aircraft operator that demonstrates to the satisfaction of the FAA that there has been a change in the noise environment that would be sufficient to justify the review. The burden of notice and analysis requirements, including a draft environmental document, is placed on the aircraft operator that initiates the request for reevaluation. These costs are comparable to those for airport operators that propose restrictions under subpart D, above. The FAA will review the documentation submitted and comments received and issue appropriate findings on the request. The benefits of proposing a change for one aircraft operator would be primarily the operating economies and resulting improved profits that may be projected to result from less stringent airport restrictions. The reevaluation costs for an aircraft operator may be reduced by sharing these costs among a group of aircraft operators that wish to take advantage of less restrictive operation at an airport. It may be presumed that an aircraft operator (or whoever requests a reevaluation) would not request a reevaluation of a restriction unless it perceived that the benefits it expects to accrue would be in excess of costs it will incur in successfully completing the reevaluation process. The proposed rule does not require reevaluation, hence it does not directly impose any cost. Parties such as airport operators with an interest in commenting on the reevaluation may choose to incur costs in preparing comments, but do so at their own discretion.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires a Regulatory Flexibility Analysis if a rule has a significant economic impact, either detrimental or beneficial, on a substantial number of small business entities. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, establishes threshold cost values and small entity size standards for complying with RFA review requirements in FAA rulemaking actions.

The FAA has provisionally determined that it is unlikely that the proposed regulations could have a significant economic impact on a substantial number of small entities. (FAA Order 2100.14A specifies the threshold regulatory cost at $5,400 in 1983 dollars (approximately $7,000 in 1991 dollars) for airports serving cities with a population of less than 49,000. According to this Order, a "substantial number of small entities means a number which is not less than eleven and which is more than one-third of the small entities subject to a . . . rule.") While the costs of required analysis may exceed $7,000, it is noted that the cost of the required analysis may in

some cases be moderate because many proposed restrictions will not require the amount of data handling and complexity of analysis appropriate for major restrictions at larger airports. In addition, it is believed unlikely that an airport operator would initiate an action that would make it subject to the proposed rule unless it believed that the benefits would be well in excess of the costs of complying with the rule. The proposed rule allows an airport operator that proposes restrictions on Stage 2 aircraft substantial latitude in determining the components of the associated analysis. It may be appropriate to establish thresholds for analysis requirements that vary with the level of operations at airports or other considerations. Further, and more important, it is believed to be unlikely that a "substantial number of small entities"—one third of the airports serving cities with a population of 49,000 or less—will propose restrictions, or changes to restrictions, during any single year. It is not expected that airports considered small entities will, as a group, impose restrictions subject to this proposed rule at as high a relative frequency as larger airports. Smaller metropolitan areas tend to generate less air traffic, have smaller airports, and be served by smaller aircraft than do the larger urban areas that are more likely to be served by Stage 2 and Stage 3 aircraft. However, in recognition of potential cost burdens on small entities, the FAA solicits comments relating to an appropriate variation in the threshold for analysis and notice requirements.

Initial Trade Impact Assessment

The costs that may be incurred as a result of implementing the proposed rules at the airports that account for most of the U.S. international air commerce are believed to be small relative to other charges imposed by the airports on air carriers operating in international commerce. As a result, the requirements of this proposed rule are not expected to have a significant impact on U.S. international trade.

Federalism Implications

Although the agency has determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment, it should be noted that, regardless of that determination, it is also the agency's determination that the problem described in this document requires action that can only be effectively implemented at the national level. In support of this finding, it is noted that, in the Airport Noise and Capacity Act of 1990, section 9302, Congress found that, among other things, "airport noise management is crucial to the continued increase in airport capacity; community noise concerns have led to uncoordinated and inconsistent restrictions on aviation which could impede the national air transportation system;" and that "a noise policy must be implemented at the national level."

The proposed regulations would implement a new statute that authorizes state and local governments that operate airports to enter into agreements that may affect the operation of certain aircraft at their airports. While the initiation of restrictions on the affected aircraft at these airports would be a local decision, the statute imposes federal requirements on the applicant (e.g., for notice and/or analysis of the proposed restrictions) and requires Federal oversight (e.g., where there may be substantial adverse affects on interstate commerce).

Although a national solution is required by the Act, provisions of the proposed rule are intended to impose on state and local governments the minimum restrictions and requirements that are consistent with the statutory limitations and the Federal oversight role contemplated by the Airport Noise and Capacity Act of 1990 and other regulations that would pertain to airport operations.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, this proposal, if adopted, 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. The proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 161

Air carriers, Aircraft, Airport, Airport noise, Air transportation, Noise control.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to add a new part 161 to title 14, Chapter I, subchapter I of the Code of Federal Regulations to read as follows:

PART 161—NOTICE AND APPROVAL OF AIRPORT NOISE AND ACCESS RESTRICTIONS

Subpart A—General Provisions

Sec.
161.1 Purpose.
161.3 Applicability.
161.5 Definitions.
161.7 Limitations.
161.9 Designation of noise measurement systems.
161.11 Identification of land uses in airport noise study area.

Subpart B—Notice Requirements for Noise Agreements

161.101 Scope.
161.103 Notice of proposed agreement.
161.105 Implementation of agreement.
161.107 Termination of agreement.

Subpart C—Notice Requirements for Stage 2 Restrictions

161.201 Scope.
161.203 Notice of proposed restrictions.
161.205 Required analysis of proposed restriction and alternatives.
161.207 Comment by interested parties.
161.209 Requirement for a new notice.
161.211 Optional use of 14 CFR part 150 procedures.
161.213 Notification of a decision not to implement a restriction.

Subpart D—Notice, Review, and Approval Requirements for Stage 3 Restrictions

161.301 Scope.
161.303 Notice of proposed restrictions.
161.305 Required analysis of proposed restrictions.
161.307 Comment by interested parties.
161.309 Requirement for a new notice.
161.311 Application procedure for approval of proposed restriction.
161.313 Review of application.
161.315 Federal Register publication.
161.317 Conditions for approval.
161.319 Approval or disapproval of proposed restriction.
161.321 Withdrawal or revision of restriction.
161.323 Optional use of 14 CFR part 150 procedures.
161.325 Notification of a decision not to implement a restriction.

Subpart E—Reevaluation of Stage 3 Restrictions

161.401 Scope.
161.403 Criteria for reevaluation.
161.405 Request for reevaluation.
161.407 Notice of reevaluation.
161.409 Required analysis by reevaluation petitioner.
161.411 Comment by interested parties.
161.413 Reevaluation procedure.
161.415 Reevaluation action.

161.417 Notification of status of restrictions and agreements not meeting conditions of approval criteria.

Subpart F—Failure to Comply With This Part

161.501 Scope.
161.503 Notice of potential restrictions on airport improvement program funds and passenger facility charges.

Authority: 49 U.S.C. 1301, 1305, 1348, 1349(a), 1354, 1421, 1423, 1431, and 1486, 49 U.S.C. 1655(c), 49 U.S.C. 2101, 2102, 2103(a), and 2104 (a) and (b), 49 U.S.C. 2210(a)(5), and 49 U.S.C. 2153, 2154, 2155, and 2156.

Subpart A—General Provisions

§ 161.1 Purpose.

This part implements the Airport Noise and Capacity Act, Public Law 101–508, 49 U.S.C. 2153, 2154, 2155, and 2156 enacted November 5, 1990. It prescribes:

(a) Notice requirements and procedures for aircraft noise and access agreements between airport operators and aircraft operators;

(b) Analysis and notice requirements for Stage 2 aircraft noise and access restrictions proposed by airport operators;

(c) Notice, review, and approval requirements for Stage 3 aircraft noise and access restrictions; and

(d) Procedures for reevaluation by the Federal Aviation Administration of agreements and aircraft noise and access restrictions affecting Stage 3 aircraft operations.

§ 161.3 Applicability.

(a) This part applies to airport restrictions on Stage 2 aircraft operations proposed after October 1, 1990, and to airport restrictions on Stage 3 aircraft operations that become effective after October 1, 1990.

(b) The notice, review, and approval requirements set forth in this part apply to all airport noise or access restrictions as defined in § 161.5 of this part.

§ 161.5 Definitions.

For the purposes of this part, the following definitions apply:

Agreement means a program or plan for the control of airport noise or access agreed to by the airport operator and all affected aircraft operators.

Airport means any area of land or water, including any heliport, that is used or intended to be used for the landing and takeoff of aircraft, and any appurtenant areas that are used or intended to be used for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

Airport noise study area means that area surrounding the airport within the DNL 65 dB contour, as defined in 14 CFR part 150, that contains noise-sensitive land uses (typically residential neighborhoods, educational, health or religious structures or sites and outdoor recreational, cultural, and historic sites).

Aircraft operator includes any representative empowered to enter into agreements with the airport operator regarding use of the airport by an aircraft. This may include representatives of air carriers or the operator of any aircraft affected by a Stage 2 or Stage 3 noise and access restriction.

Airport operator means the airport proprietor.

Aviation user class means the following categories of aircraft operators: air carriers operating under part 121 or part 129, commuters and other carriers operating under parts 127 and 135, general aviation, military, or government operations.

Day-night average sound level (DNL) means the 24-hour average sound level, in decibels, for the period from midnight to midnight, obtained after the addition of ten decibels to sound levels for the periods between midnight and 7 a.m., and between 10 p.m., and midnight, local time. The symbol for DNL is L_{dn}.

Noise or access restrictions means restrictions affecting access or noise that affect the operation of Stage 2 or Stage 3 aircraft, such as limits as to noise generated on either a single event or cumulative basis; a limit, direct or indirect, on the total number of Stage 2 or Stage 3 aircraft operations; a noise budget or noise allocation program that includes Stage 2 or Stage 3 aircraft; a restriction imposing limits on hours of operations; a program of airport use charges that has the direct or indirect effect of controlling airport noise; and any other limit on Stage 2 or Stage 3 aircraft that has the direct or indirect effect of controlling airport noise. This definition does not include peak-period pricing programs whose objective is to align the number of aircraft operations with airport capacity.

Stage 2 aircraft means an aircraft that has been shown to comply with the Stage 2 requirements under 14 CFR part 36.

Stage 3 aircraft means an aircraft that has been shown to comply with the Stage 3 requirements under 14 CFR part 36.

§ 161.7 Limitations.

(a) Noise abatement operational procedures, including but not limited to preferential runway use, noise abatement approach and departure procedures and profiles, flight tracks, taxiing, engine runups, do not fall within the purview of this part unless they limit the total number of Stage 2 or Stage 3 aircraft operations at an airport or limit the hours of Stage 2 or Stage 3 aircraft operations.

(b) The notice, review, and approval requirements set forth in this part do not apply in the following cases as specified in section 9304(a)(2)(C) of Public Law 101–508:

(1) A local action to enforce a negotiated or executed airport aircraft noise or access agreement between the airport operator and the aircraft operator in effect on November 5, 1990.

(2) A local action to enforce a negotiated or executed airport aircraft noise or access restriction between the airport operator and the aircraft operators agreed to before November 5, 1990.

(3) An intergovernmental agreement including airport aircraft noise or access restriction in effect on November 5, 1990.

(4) A subsequent amendment to an airport aircraft noise or access agreement or restriction in effect on November 5, 1990, where the amendment does not reduce or limit aircraft operations or affect aircraft safety.

(5) A restriction that was adopted by an airport operator on or before October 1, 1990, and that was stayed as of October 1, 1990, by a court order or as a result of litigation, if such restriction, or a part thereof, is subsequently allowed by a court to take effect.

(6) In any case in which a restriction described in paragraph (c)(5) of this section is either partially or totally disallowed by a court, any new restriction imposed by an airport operator to replace such disallowed restriction, if such new restriction would not prohibit aircraft operations in effect on November 5, 1990.

(7) A local action that represents the adoption of the final portion of a program of a staged airport aircraft noise or access restriction, where the initial portion of such program was adopted during calendar year 1988 and was in effect on November 5, 1990.

(c) The notice, review, and approval requirements of Subpart D of this part with regard to Stage 3 aircraft restrictions do not apply if the FAA has, prior to November 5, 1990, formed a working group (outside of the process established by 14 CFR part 150) with a local airport operator to examine the noise impact of air traffic control procedure changes. In any case in which an agreement relating to noise reductions at such airport is then entered into between the airport proprietor and an air carrier or air

carrier constituting a majority of the air carrier users of such airport, the requirements of subparts B and D with respect to restrictions of Stage 3 aircraft operators do apply to local actions to enforce such agreements.

(d) Except to the extent required by the application of the provisions of the Act, nothing in this part eliminates, invalidates, or supersedes the following:

(1) Existing law with respect to airport noise or access restrictions by local authorities;

(2) Any proposed airport noise or access regulation at a general aviation airport where the airport proprietor has formally initiated a regulatory or legislative process on or before October 1, 1990; and

(3) The authority of the Secretary of Transportation to seek and obtain such legal remedies as the Secretary considers appropriate, including injunctive relief.

§ 161.9 Designation of noise measurement systems.

For purposes of this part, the following requirements apply:

(a) The A-weighted sound pressure level (L_A) at an airport and surrounding areas must be measured in units of decibels (dB) in accordance with the specifications and methods prescribed under appendix A of 14 CFR part 150;

(b) The exposure of individuals to noise resulting from operation of an airport must be established in terms of yearly day-night average sound level (DNL) calculated in accordance with the specifications and methods prescribed under appendix A of 14 CFR part 150; and

(c) Use of computer models to create noise contours must be in accordance with the criteria prescribed under appendix A of 14 CFR part 150.

§ 161.11 Identification of land uses in airport noise study area.

For the purposes of this part, uses of land that are normally compatible or noncompatible with various noise exposure levels to individuals around airports must be identified in accordance with the criteria prescribed under appendix A of 14 CFR part 150. Determination of land use must be based on professional planning, zoning, and building and site design information and expertise.

Subpart B—Notice Requirements for Noise Agreements

§ 161.101 Scope.

This subpart applies to an airport noise or access restriction on the operation of Stage 2 or Stage 3 aircraft that is voluntarily agreed to by the airport proprietor; all aircraft operators serving the airport that are affected by the agreement; and all affected new entrants that have applied to serve the airport within 180 days following the effective date of the agreement and that have submitted a plan of operations to the airport operator. This subpart does not apply to restrictions specifically exempted in § 161.7 of this part.

§ 161.103 Notice of proposed agreement.

(a) An airport operator may not implement a Stage 2 or Stage 3 restriction in accordance with an agreement with all affected aircraft operators unless there has been public notice and opportunity for comment as prescribed in this subpart.

(b) Before concluding an agreement, an airport operator shall publish a notice of the proposed agreement in a newspaper with national circulation, an areawide newspaper of general circulation, and in aviation trade publications, and shall directly notify in writing the following parties—

(1) Aircraft operators serving the airport and aircraft operators known to be interested in serving the airport that are expected to be affected by the agreement;

(2) The Federal Aviation Administration;

(3) Each Federal agency with facilities or land use control jurisdiction within the airport noise study area; and

(4) Each state and local agency and land use planning or control jurisdiction within the airport noise study area.

(c) Each published notice and direct notification shall include—

(1) The name of the airport and associated cities and states;

(2) A clear, concise description of the proposed agreement, including its voluntary nature;

(3) A brief discussion of the specific need for and goal of the agreement;

(4) Identification of the aircraft operators expected to be affected;

(5) The proposed effective date of the agreement;

(6) A notification to potential new entrant aircraft operators that they have 45 days to submit to the airport operator an application to serve the airport within 180 days following the proposed effective date of the agreement, together with a plan of operations, in order to qualify as parties to an agreement; and

(7) Information on how to submit a new entrant application and other comments, including the name and address of a contact person at the airport.

§ 161.105 Implementation of agreement.

(a) An airport operator may not implement an agreement until after the 45-day period provided for new entrant applications and unless agreed to by all affected aircraft operators.

(b) Each airport operator shall notify the FAA of the implementation of an agreement and shall include in the notification evidence of adequate notice and of agreement by all affected aircraft operators, as well as a copy of the signed agreement.

(c) To be eligible for treatment under this subpart, a noise or access agreement must be in writing and must be signed by the airport operator and aircraft operators.

§ 161.107 Termination of agreement.

If an agreement terminates, an airport operator shall so notify the FAA and shall report on the airport operator's intent with regard to the provisions contained in the terminated agreement.

Subpart C—Notice Requirements for Stage 2 Restrictions

§ 161.201 Scope.

(a) This subpart applies to—

(1) An airport noise or access restriction on the operation of Stage 2 aircraft, but not Stage 3 aircraft, proposed after October 1, 1990.

(2) An amendment to an existing Stage 2 restriction, if the amendment becomes effective after November 5, 1990, and reduces or limits Stage 2 aircraft operations or affects aircraft safety.

(b) This subpart does not apply to a Stage 2 restriction specifically exempted in § 161.7 of this part or an agreement in accordance with subpart B of this part.

§ 161.203 Notice of proposed restriction.

(a) An airport operator may not implement a Stage 2 restriction within the scope of § 161.201 unless the airport operator provides an analysis of the proposed restriction and a public notice and opportunity for comment as prescribed in this subpart. The required analysis in § 161.205 shall be made available for public comment at least 180 days before the effective date of the restriction.

(b) Except as provided in § 161.211, an airport operator shall publish a notice of the proposed restriction in a newspaper with national circulation, an areawide newspaper of general circulation, and in aviation trade publications, and shall directly notify in writing the following parties—

(1) Aircraft operators serving the airport and aircraft operators known to

be interested in serving the airport that are expected to be affected by the restrictions;

(2) The Federal Aviation Administration;

(3) Each Federal agency with facilities or land use control jurisdiction within the airport noise study area; and

(4) Each state and local agency and land use planning or control agency with jurisdiction within the airport noise study area.

(c) Each published notice and direct notification provided in accordance with paragraph (b) of this section shall include—

(1) The name of the airport and associated cities and states;

(2) A clear, concise description of the proposed restriction, including a statement that it will be a mandatory Stage 2 restriction, and the location where the complete text of the restriction and sanctions for noncompliance is available for public inspection;

(3) A brief discussion of the specific need for, and goal of, the restriction;

(4) Identification of the aircraft operators expected to be affected;

(5) The proposed effective date of the restriction, the proposed method of implementation (e.g., city ordinance, airport rule), and any proposed enforcement mechanism;

(6) An analysis of the proposed restriction or an announcement that the analysis is available upon request from the airport operator;

(7) An invitation to comment on the proposed restriction and analysis with a minimum 45-day comment period; and

(8) Information on how to request the analysis (if not included with the notice) and the address for submitting comments fon the airport operator, including a contact person at the airport.

§ 161.205 Required analysis of proposed restriction and alternatives.

(a) Each airport operator proposing a noise or access restriction on Stage 2 aircraft operations shall prepare the following and make it available for public comment:

(1) An analysis of the anticipated or actual costs and benefits of the proposed noise or access restriction;

(2) A description of alternative restrictions; and

(3) A description of the alternative measures considered that do not involve aircraft restrictions, and a comparison of the costs and benefits of such alternative measures to costs and benefits of the proposed noise or access restriction.

(b) In preparing the analyses required by this section, the airport operator shall use the noise measurement systems and identify the airport noise study area as specified in §§ 161.9 and 161.11, respectively, and shall use currently accepted economic methodology and reflect current airline industry practice. The airport operator shall specify the methods used to analyze the costs and benefits of the proposed restriction and the alternatives.

(c) The kinds of information set forth in § 161.305 are useful elements of an adequate analysis of a noise or access restriction on Stage 2 aircraft operations.

§ 161.207 Comment by interested parties.

(a) Each airport operator shall establish a public docket or similar method for receiving and considering comments and shall make comments available to interested parties upon request. Comments must be retained as long as the restriction is in place.

(b) Each airport operator shall promptly advise interested parties of changes to a proposed restriction, including changes that affect noncompatible land uses, that take place within the 180-day notice period and make available any changes to the proposed restriction and its analysis. Interested parties include those who received direct notification under § 161.203(b), or that were required to be consulted in accordance with the procedures in § 161.211 of this part, and those who have commented on the proposed restriction.

§ 161.209 Requirement for new notice.

(a) If there are substantial changes to the proposed restriction or the analysis during the 180-day notice period, the airport operator shall initiate a new notice and direct notification following the procedures in § 161.203 or, alternately, the procedures in § 161.211. A substantial change includes, but is not limited to, a more restrictive proposal or a revision that alters the way impacts are apportioned among aircraft operators.

(b) In addition to the information in § 161.203(c), a new notice and direct notification must indicate that the airport operator is revising a previous notice, provide the reason for making the revision, and provide a new effective date (if any) for the restriction. The effective date of the restriction must be at least 180 days after the date the new notice and revised analysis are made available for public comment.

§ 161.211 Optional use of 14 CFR Part 150 procedures.

An airport operator may use the procedures in part 150 of this chapter, instead of the procedures described in §§ 161.203(b) and 161.207(b), as a means of providing an adequate public notice and comment opportunity on a proposed Stage 2 restriction. If the airport operator elects to use 14 CFR part 150 procedures to comply with this subpart, the analysis of the restriction in the airport operator's 14 CFR part 150 submission must include the information in §§ 161.203(c) (2) through (5) and 161.205.

§ 161.213 Notification of a decision not to implement a restriction.

If a proposed restriction has been through the procedures prescribed in this subpart and the restriction is not subsequently implemented, the airport operator shall so advise the interested parties. Interested parties are described in § 161.207(b).

SUBPART D—NOTICE, REVIEW, AND APPROVAL REQUIREMENTS FOR STAGE 3 RESTRICTIONS

§ 161.301 Scope.

(a) This subpart applies to—

(1) An airport noise or access restriction on the operation of Stage 3 aircraft that first becomes effective after October 1, 1990.

(2) An amendment to an existing Stage 3 restriction, if the amendment becomes effective after November 5, 1990, and reduces or limits Stage 3 aircraft operations or affects aircraft safety.

(b) This subpart does not apply to a Stage 3 restriction specifically exempted in § 161.7, or an agreement in accordance with subpart B of this part.

(c) A Stage 3 restriction within the scope of this subpart may not become effective unless it has been submitted to and approved by the FAA. The FAA will review only those Stage 3 restrictions that are proposed by or on behalf of an entity empowered to implement the restriction.

§ 161.303 Notice of proposed restrictions.

(a) Each airport operator or aircraft operator (hereinafter referred to as applicant) proposing a Stage 3 restriction shall provide public notice and an opportunity for public comment, as prescribed in this subpart, before submitting the restriction to the FAA for review and approval.

(b) Except as provided in § 161.323, an applicant shall publish a notice of the proposed restriction in a newspaper with national circulation, an areawide newspaper of general circulation, and in aviation trade publications, and shall directly notify in writing the following parties:

(1) Aircraft operators serving the airport and aircraft operators known to be interested in serving the airport that are expected to be affected by the restriction;

(2) The Federal Aviation Administration;

(3) Each Federal agency with facilities or land use control jurisdiction within the airport noise study area; and

(4) Each state and local agency and land use planning or control jurisdiction within the airport noise study area.

(c) Each published notice and direct notification provided in accordance with paragraph (b) of this section shall include—

(1) The name of the airport and associated cities and states;

(2) A clear, concise description of the proposed restriction, including a statement that it will be a mandatory Stage 3 restriction; and the location where text of the restriction and sanctions for noncompliance are available for public inspection;

(3) A brief discussion of the specific need for, and goal of, the restriction;

(4) Identification of the aircraft operators expected to be affected;

(5) The proposed effective date of the restriction, the proposed method of implementation (e.g., city ordinance, airport rule), and any proposed enforcement mechanism;

(6) An analysis of the proposed restriction or an announcement that the analysis is available upon request from the airport operator or aircraft operator proposing the restriction;

(7) An invitation to comment on the proposed restriction and analysis, with a minimum 45-day comment period; and

(8) Information on how to request the analysis (if not included with the notice) and the address for submitting comments to the airport operator or aircraft operator proposing the restriction, including the name of a contact person.

§ 161.305 Required analysis of proposed restrictions.

Any proposed restriction on Stage 3 aircraft operations that also affects the operation of Stage 2 aircraft must analyze the restriction in a manner that permits it to be understood in its entirety. Nothing in this section is intended to limit or prohibit the issuance of restrictions on Stage 2 aircraft, as long as the requirements of subpart B or subpart C, as appropriate, of this part are met. Each applicant proposing a noise or access restriction on Stage 3 operations shall prepare the following analysis and make it available for public comment:

(a) The complete text of the proposed restriction, including the proposed wording in a city ordinance, airport rule, or other document, and all sanctions, if any, for noncompliance;

(b) A detailed description of the problem precipitating the proposed restriction, with relevant background information on factors contributing to the proposal; a description of any noise agreements or noise or access restrictions currently in effect at the airport; and measures taken to achieve land use compatibility, such as controls or restrictions on land use in the vicinity of the airport, grant assurances and measures carried out in response to 14 CFR part 150, and actions taken to comply with grant assurances requiring that—

(1) Airport development projects be reasonably consistent with plans of public agencies that are authorized to plan for the development of the area around the airport; and

(2) The sponsor—

(i) Give fair consideration to the interests of communities in or near which the project may be located;

(ii) Take appropriate action, including the adoption of zoning laws, to the extent reasonable, to restrict the use of land near the airport to activities and proposes compatible with normal airport operations; and

(iii) Not cause or permit any change in land use, within its jurisdiction, that will reduce the compatibility, with respect to the airport, of any noise compatibility program measures upon which federal funds have been expended;

(c) Maps denoting the airport geographic boundary, the geographic boundaries and names of each jurisdiction that controls land use within the airport noise study area and, if appropriate, airspace and obstacles to navigation in the vicinity of the airport. Data on current and projected airport activity that would exist in the absence of the proposed restriction;

(d) Descriptions of alternative aircraft restrictions that have been considered and rejected, and the reasons for the rejection, any land use or other nonaircraft controls or restrictions that have been considered and rejected, including those proposed under 14 CFR part 150 and not implemented, and the reasons for the rejection, or failure to implement;

(e) An analysis of the effect of the proposed restriction on airport capacity, on the number of affected operations of aircraft by class of user (and for air carriers, the number of operations of aircraft by carrier), and on the volume of passengers and cargo for the year the restriction is expected to be implemented and for the forecast timeframe;

(f) An analysis of the estimated noise impact of aircraft operations with and without the proposed restriction for the year the restriction is expected to be implemented, for a forecast timeframe after implementation, and for any other years critical to understanding the noise impact of the proposed restriction. The analysis of noise effect with and without the proposed restrictions will include—

(1) Maps of the airport noise study area overlaid with noise contours as specified in §§ 161.9 and 161.11;

(2) The number of people and the noncompatible land uses within the airport noise study area for each year the noise restriction is compared;

(3) A description of the relationship of the effect of the proposed restriction on airport users (by user class), and the noise attributable to these users in the absence of the proposed restrictions; and

(4) Technical data supporting the noise impact analysis, including the classes of aircraft, fleet mix, runway use percentage, and day/night breakout of operations;

(g) Analyses of other effects of the proposed restriction with respect to use of airspace in the vicinity of the airport, safety, and environmental factors other than noise. The analyses shall include a description of the methods and data used;

(h) Comparative economic analyses of the costs and benefits of the proposed restriction and aircraft and nonaircraft alternative measures. In preparing the economic analyses required by this section, the applicant shall use currently accepted economic methodology and reflect current airline industry practice. The applicant shall specify the methods used to analyze costs and benefits of the proposed restriction and the alternatives:

(1) Comprehensive analyses of estimated costs of the proposed restriction and alternative nonaircraft restrictions considering the following, as appropriate:

(i) Any additional cost of continuing aircraft operations under the restriction. Such costs must include reasonably available information concerning—

(A) Any net capital costs of acquiring or retrofitting aircraft (net of salvage and operating efficiencies) by user class; and

(B) Any other incremental recurring costs;

(ii) Costs associated with altered or discontinued aircraft operations, such as reasonably available information concerning—

(A) Loss to carriers of operating profits;

(B) Decreases in passenger and shipper consumer surplus by aviation user class;

(C) Loss in profits associated with other airport services or other entities;

(D) Any significant economic effect on parties other than aviation users;

(iii) Costs associated with implementing nonaircraft restrictions or nonaircraft components of restrictions, such as reasonably available information concerning—

(A) Estimates of capital costs for real property, including redevelopment, soundproofing, noise easements, and purchase of property interests; and

(B) Estimates of associated incremental recurring costs; or

(C) An explanation of the legal or other impediments to implementing such restrictions;

(2) Analyses of estimated benefits of the proposed restriction and alternative restrictions considering the following, as appropriate—

(i) Anticipated increase in real estate values and future construction cost savings;

(ii) Anticipated increase in airport revenues;

(iii) Other benefits, including increases in the quality of life; and

(iv) Valuation of positive safety effects;

(i) A complete draft environmental document complying with FAA orders and procedures regarding compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 321);

(j) A summary of the evidence in the submission supporting the statutory conditions of approval, as delineated in § 161.317.

§ 161.307 Comment by interested parties.

(a) Each applicant proposing a restriction shall establish a public docket or similar method for receiving and considering comments and shall make comments available to interested parties upon request. Comments must be retained as long as the restriction is in place.

(b) Each applicant shall promptly advise interested parties of changes to a proposed restriction, including changes that impact noncompatible land use, that take place before the effective date of the restriction and make available any changes to the proposed restriction and its analysis. For the purpose of this paragraph, interested parties include those who received direct notification under § 161.303(b) of this part, or those who were required to be consulted in accordance with the procedures in § 161.323 of this part, and those who commented on a published notice of the proposed restriction.

(c) The analyses and other documentation submitted to the FAA to request approval of the restriction must include evidence that the public review process was carried out in accordance with §§ 161.303 and 161.307 (and with § 161.309, if applicable) and must include a summary of any comments received. Upon request by the FAA, the applicant shall submit copies of the comments.

§ 161.309 Requirement for a new notice.

(a) If there are substantial changes to a proposed restriction or changes in the analysis made prior to the effective date of the restriction, the applicant proposing the restriction shall initiate a new notice and direct notification following the procedures in § 161.303 or, alternatively, the procedures in § 161.323. A substantial change includes, but is not limited to, a more restrictive proposal or a revision that alters the way impacts are apportioned among aircraft operators.

(b) In addition to the information in § 161.303(c), a new notice and direct notification must indicate that the applicant is revising a previous notice, provide the reason for making the revision, and provide a new effective date (if any) for the restriction.

(c) If substantial changes requiring a new notice and direct notification are made during the FAA's 180-day review of the proposed restriction, the applicant submitting the proposed restriction shall notify the FAA in writing that it is withdrawing its proposal from the review process until it has completed additional analysis, public review, and documentation of the public review. Resubmission to the FAA will restart the FAA review.

§ 161.311 Application procedure for approval of proposed restriction.

Each applicant proposing a Stage 3 restriction shall submit to the FAA the following information, with a request that the FAA review and approve the proposed Stage 3 noise or access restriction:

(a) Analysis as specified in § 161.305, as appropriate to the proposed restriction;

(b) Summary of evidence of fulfillment of conditions for approval, as specified in § 161.317;

(c) Evidence of adequate opportunity for public comment as specified in § 161.307(c); and

(d) A statement that the entity submitting the proposal is the party empowered to implement the restriction, or is submitting the proposal on behalf of such party.

§ 161.313 Review of application.

(a) *Determination of completeness.* The FAA, within 30 days of receipt of an application, will determine whether the application is complete in accordance with § 161.311. This is not an approval or disapproval of the proposed restriction itself.

(b) *Process for complete application.* When the FAA determines that a complete application has been submitted, the following procedures apply:

(1) The FAA notifies the airport operator/aircraft operator (applicant) that it intends to approve or disapprove the proposed restriction and publish notice of the proposed restriction in the **Federal Register** in accordance with § 161.315. In this case, the 180-day period for approving or disapproving the proposed restriction will start on the date of original receipt of the application.

(2) Following review of the application, public comments, and any other information obtained under § 161.319(a), the FAA will issue a decision approving or disapproving the proposed restriction. This decision is a final decision of the Administrator for judicial review purposes.

(c) *Process for incomplete application.* If the FAA determines that an application is not complete, the following procedures apply:

(1) The FAA shall notify the applicant by mail, returning the application and setting forth the type of information and analysis needed to complete the application in accordance with § 161.311.

(2) Within 30 days after the receipt of this notification, the applicant shall advise the FAA by mail whether or not it intends to resubmit and supplement its application.

(3) If the applicant does not respond in 30 days, or advises the FAA that it does not intend to resubmit and supplement the application, the application will be denied. This closes the matter without prejudice to later application and does not constitute disapproval of the proposed restriction.

(4) If the applicant chooses to resubmit and supplement the application, the following procedures apply:

(i) Upon receipt of the resubmitted application, the FAA determines whether the application, as supplemented, is complete as set forth in paragraph (a) of this section.

(ii) If the application is complete, the procedures set forth in § 161.315 shall be followed. In this case, the 180-day review period starts on the date of receipt of the supplemented application.

(iii) If the application is still not complete, the FAA so advises the applicant as set forth in paragraph (c)(1) of this section, and provides the applicant with an additional opportunity to supplement the application as set forth in paragraph (c)(2) of this section.

(iv) If the environmental document is incomplete, the FAA will so notify the applicant by mail, returning the application and setting forth the types of information and analysis needed to complete the draft environmental document. The FAA may continue to return an application until an adequate environmental document is provided. When the application is determined to be complete, including the environmental document, the 180-day period for approval or disapproval will begin upon receipt of the last supplement to the application.

(v) Following review of the application and its supplements, public comments and any other information obtained under § 161.319(a), the FAA will issue a decision approving or disapproving the application. This decision is a final decision of the Administrator for the purpose of judicial review.

(5) If the applicant declines to complete an application that has been returned twice for reasons other than to complete the environmental document, the FAA will deny the application and return it to the applicant. This closes the matter without prejudice to later application.

§ 161.315 Federal Register publication.

(a) When a complete application has been received, the FAA will notify the applicant by letter that the FAA intends to rule on the application.

(b) The FAA will also publish notice of the proposed restriction in the **Federal Register**, inviting interested persons to file comments on the application within 30 days after publication of the notice in the **Federal Register**.

§ 161.317 Conditions for approval.

When submitting an application for approval of noise or access restrictions on Stage 3 aircraft operations, the applicant must provide a summary of evidence establishing that the proposed restriction meets statutory conditions for approval. The following criteria are essential elements of acceptable evidence of fulfilling approval conditions:

(a) Evidence that the restriction is reasonable, nonarbitrary, and nondiscriminatory, such as—

(1) Evidence that a current or projected noise or access problem exists, including any court-ordered action or estimated liability concerns;

(2) Evidence that the proposed actions could relieve the problem;

(3) Evidence that there is a reasonable chance that expected benefits will equal or exceed expected cost, or that other available remedies are infeasible or would be less cost-effective;

(4) Evidence that the level of any noise-based fees that may be imposed reflects the cost of mitigating noise impacts produced by the aircraft, or that the fees are reasonably related to the intended level of noise impact mitigation; and

(5) Evidence that the noise or access standards are the same for all airport users or that the differences are justified.

(b) Evidence that the restriction does not create an undue burden on interstate or foreign commerce, such as—

(1) Evidence that the affected carriers have a reasonable chance to continue service at the airport or at other points in the national airport system and maintain similar levels of profitability;

(2) Evidence that other air carriers are able to provide adequate service to the airport and other points in the system without diminishing competition;

(3) Evidence, based on a cost-benefit analysis (prepared in compliance with § 161.305), that the estimated potential benefits of the restriction exceed the estimated potential cost of the adverse effects on interstate and foreign commerce.

(4) Evidence that similar or equal services or facilities are available at another airport controlled by the airport operator in the market area, and evidence of services available at other airports;

(5) Evidence that alternative transportation service can be attained through other means of transportation;

(6) As an alternative to paragraphs (b)(1) through (b)(5) of this section, the applicant may provide national notice in a manner similar to that required in § 161.303 of the proposed restriction and request arguments on any perceived undue burden on interstate or foreign commerce. The absence of comments may be submitted as evidence that there is no undue burden.

(c) Evidence that the proposed restriction maintains safe and efficient use of the navigable airspace.

(d) Evidence pertaining to any possible conflict between the proposed restriction and any existing Federal statute or regulation including those governing—

(1) Exclusive rights;

(2) Control of aircraft operations; and

(3) Existing Federal grant agreements;

(e) Evidence that there has been adequate opportunity for public comment on the restriction as specified in § 161.303; and

(f) Evidence that the proposed restriction does not create an undue burden on the national aviation system, such as—

(1) Evidence regarding the current airport system capacity and any change in current and projected future airport system delays or congestion; or

(2) Evidence that nonaircraft alternative measures are inappropriate.

(3) As an alternative to paragraphs (f)(1) and (f)(2) of this section, the applicant may provide national notice in a manner similar to that required in § 161.303 of the proposed restriction and request arguments on any perceived undue burden to the national airspace system. The absence of comments may be submitted as evidence that there is no undue burden.

§ 161.319 Approval or disapproval of proposed restriction.

(a) The FAA will review the applicant's request and may request additional information from affected aircraft operators, or any other party, and may convene an informal meeting in order to gain all facts relevant to its determination.

(b) Following review of the application and any supplementary information provided under § 161.313, public comments, applicable environmental documents, and the FAA's responsibilities under this part, the FAA will issue an order approving or disapproving the application within 180 days after receipt of the application or supplement thereto under § 161.313, and will publish its decision in the **Federal Register** and notify the applicant in writing.

(c) The applicant's failure to provide substantial evidence supporting the statutory conditions for approval of the restriction is grounds for disapproval of a proposed restriction.

(d) The FAA will approve or disapprove only the Stage 3 elements of a restriction, if the restriction applies to both Stage 2 and Stage 3 aircraft operations.

(e) An order approving a restriction may be subject to the requirement that the applicant—

(1) Ensure continued compliance with factual representations and

commitments by the applicant in support of the restriction; and

(2) Ensure that any environmental mitigation actions or commitments by any party that are set forth in the environmental document provided in support of the restriction are carried out.

§ 161.321 Withdrawal or revision of restriction.

(a) The applicant may withdraw or revise a proposed restriction at any time prior to the FAA's approval or disapproval, and must do so if substantial changes are made as described in § 161.309. The applicant shall notify the FAA in writing of a decision to withdraw the proposed restriction for any reason. The FAA will publish a notice that it has terminated its review. A resubmittal will initiate a new FAA review.

(b) A subsequent amendment to a Stage 3 restriction in effect on the date of enactment of the Act or an amendment to a Stage 3 restriction previously approved by the FAA is subject to the procedures in this subpart if the amendment will further reduce or limit aircraft operations or affect aircraft safety. In addition, the applicant may, at its option, revise or amend a restriction previously disapproved by the FAA and resubmit it for approval. Amendments and revisions are subject to the same requirements and procedures as initial submissions.

§ 161.323 Optional use of 14 CFR part 150 procedures.

(a) An airport operator may use the procedures in part 150 of this chapter, instead of the procedures described in this subpart, as a means of providing an adequate public notice and comment opportunity on a proposed Stage 3 restriction. If the airport operator elects to use 14 CFR part 150 procedures to comply with this subpart, the analysis of the proposed Stage 3 restriction in the airport operator's 14 CFR part 150 submission must include the information in § 161.303 (c)(2) through (c)(5), the required analysis in § 161.305, and must meet the conditions for approval in § 161.317 of this part.

(b) An amendment of a restriction, as specified in § 161.321(b) of this part, may also be processed under 14 CFR part 150 procedures.

§ 161.325 Notification of a decision not to implement a restriction.

If a Stage 3 restriction has been approved by the FAA and the restriction is not subsequently implemented, the applicant shall so advise the interested parties specified in § 161.307 of this part.

Subpart E—Reevaluation of Stage 3 Restrictions

§ 161.401 Scope.

This subpart applies to an airport noise or access restriction on the operation of Stage 3 aircraft that was previously agreed to in accordance with the procedures in subpart B of this part or previously approved by the FAA in accordance with the procedures in subpart D of this part. This subpart does not apply to Stage 2 restrictions. It does not apply to Stage 3 restrictions specifically exempted in § 161.7 of this part.

§ 161.403 Criteria for reevaluation.

(a) A request for reevaluation must be submitted by an aircraft operator.

(b) An aircraft operator must demonstrate to the satisfaction of the FAA that there has been a change in the noise environment of the affected airport and that a review and reevaluation pursuant to the criteria in § 161.317 is therefore justified.

(1) A change in the noise environment sufficient to justify reevaluation is either a DNL change of 1.5dB or greater over noncompatible land uses or a change of 17 percent or greater in the noncompatible land uses within an airport noise study area. The change in the noise environment or in the noncompatible land uses may be either an increase or decrease in noise or in noncompatible land uses. An aircraft operator may submit to the FAA reasons why a change that does not fall within either of these parameters justifies reevaluation, and the FAA will consider such arguments on a case-by-case basis.

(2) A change in the noise environment justifies reevaluation if the change is likely to result in the restriction's not meeting one or more of the conditions for approval set forth in § 161.317 of this part for approval. The aircraft operator must demonstrate that such a result is likely to occur.

(c) A reevaluation may not occur less than 2 years after the date of the FAA approval. The FAA will apply the same 2-year requirement to agreements under subpart B of this part that affect Stage 3 aircraft operations. An aircraft operator may submit to the FAA reasons why an agreement under subpart B of this part should be reevaluated in less than 2 years, and the FAA will consider such arguments on a case-by-case basis.

(d) An aircraft operator must demonstrate that it has made a good faith attempt to resolve any dispute over a restriction locally with the affected parties, including the airport operator, before requesting reevaluation by the FAA. Such demonstration and certification shall document all attempts of local dispute resolution.

§ 161.405 Request for reevaluation.

(a) A request for reevaluation submitted to the FAA by an aircraft operator must include the following information:

(1) The name of the airport and associated cities and states;

(2) A clear, concise description of the restriction, including whether the restriction was approved by the FAA or agreed to by the airport proprietor and aircraft operators, the date of the approval or agreement, and a copy of the restriction as incorporated in a local ordinance, airport rule or other document;

(3) The quantified change in the noise environment using methodology specified in this part;

(4) Evidence of the relationship between the change and the likelihood that the restriction does not meet one or more of the conditions in § 161.317;

(5) The aircraft operator's status under the restriction (e.g., currently affected operator, potential new entrant) and an explanation of the aircraft operator's specific objection; and

(6) A description and evidence of the aircraft operator's attempt to resolve the dispute locally with the affected parties, including the airport operator.

(b) The FAA will evaluate the aircraft operator's submission and determine whether or not a reevaluation is justified. The FAA may request information from the affected airport operator or any other party and may convene an informal meeting in order to gather all facts relevant to its determination.

(c) The FAA will notify the aircraft operator by mail, with a copy to the affected airport operator, of its determination.

(1) If the FAA determines that a reevaluation is not justified, it will indicate the reasons for this decision.

(2) If the FAA determines that a reevaluation is justified, the aircraft operator will be notified to complete its analysis and to begin the public notice procedure, as set forth in this subpart.

§ 161.407 Notice of reevaluation.

(a) After receiving an FAA determination that a reevaluation is justified, an aircraft operator wanting to continue the reevaluation process shall publish a notice of the reevaluation in a newspaper with national circulation, an areawide newspaper of general circulation, and in aviation trade publications, and shall directly notify in writing the following parties–

(1) The airport operator, other aircraft operators serving the airport, and aircraft operators known to be interested in serving the airport that are affected by the restriction;

(2) The Federal Aviation Administration;

(3) Each Federal agency with facilities or land use control jurisdiction within the airport noise study area; and

(4) Each state and local agency and land use planning or control agency with jurisdiction within the airport noise study area.

(5) Any other party who commented on the original restriction and any group known to represent affected owners of noncompatible land use in the noise study area.

(b) Each published notice and direct notification shall include—

(1) The name of the airport and associated cities and states;

(2) A clear, concise description of the restriction, including whether the restriction was approved by the FAA or agreed to by the airport proprietor and aircraft operators, and the date of the approval or agreement;

(3) The name of the aircraft operator requesting a reevaluation and a statement that a reevaluation has been requested and that the FAA has determined that a reevaluation is justified;

(4) A brief discussion of the reasons why a reevaluation is justified;

(5) An analysis supporting the aircraft operator's reevaluation request or an announcement that an analysis is available upon request from the aircraft operator;

(6) An invitation to comment on the analysis supporting the proposed reevaluation, with a minimum 45-day comment period offered; and

(7) Information on how to request the analysis (if not in the notice) and the address for submitting comments to the aircraft operator, including the name of a contact person.

§ 161.409 Required analysis by reevaluation petitioner.

(a) An aircraft operator that has petitioned the FAA to reevaluate a restriction shall assume the burden of analysis for the reevaluation.

(b) The aircraft operator's analysis shall be made available for public review under the procedures in § 161.407 and shall include the following:

(1) A copy of the restriction or the language of the agreement as incorporated in a local ordinance, airport rule, or other document;

(2) The aircraft operator's status under the restriction (e.g., currently affected operator, potential new entrant) and an explanation of the aircraft operator's specific objection to the restriction;

(3) The quantified change in the noise environment using methodology specified in this part;

(4) Evidence of the relationship between this change and the likelihood that the restriction does not meet one or more of the conditions in § 161.317; and

(5) Sufficient data and analysis selected from § 161.305, as applicable to the restriction at issue, to support the contention made in paragraph (a)(4) of this section, including a complete draft environmental document complying with FAA orders implementing the National Environmental Policy Act of 1969 (42 U.S.C. 321).

(c) The amount of analysis may vary with the complexity of the restriction, the number and nature of the conditions in § 161.317 that are alleged to be violated, and the amount of previous analysis developed in support of the restriction. The applicant may incorporate analysis submitted in support of the restriction if it was previously approved by the FAA. The applicant is responsible for providing substantial evidence, as described in § 161.317, that one or more of the conditions are violated.

§ 161.411 Comment by interested parties.

(a) Each aircraft operator requesting a reevaluation shall establish a docket or similar method for receiving and considering comments and shall make comments available to interested parties specified in paragraph (b) of this section upon request. Comments must be retained for at least two years after the FAA has issued its findings following reevaluation and must be made available to the FAA upon request.

(b) Each aircraft operator shall promptly notify interested parties if it makes significant changes in its analysis that substantially change the costs or benefits analyzed or affect the criteria in § 161.317 in a way that is different from the analysis made available for comment in accordance with § 161.407. Interested parties include those who received direct notification under paragraph (a) of § 161.407 and those who have commented on a reevaluation. An aircraft operator shall make a revised analysis available to an interested party upon request and shall extend the comment period at least 45 days from the date the revised analysis is made available.

(c) The reevaluation documentation submitted to the FAA must include evidence that the public review process was carried out in accordance with §§ 161.407 and 161.411, including the aircraft operator's summary of the comments received.

§ 161.413 Reevaluation procedure.

(a) Each aircraft operator requesting a reevaluation shall submit to the FAA the analysis described in § 161.409 and the evidence of adequate opportunity for public comment specified in paragraph (c) of § 161.411, with a request that the FAA complete a reevaluation of the restriction and issue findings.

(b) Following confirmation by the FAA that the aircraft operator's documentation is complete according to the requirements of this subpart, the FAA will publish a notice of reevaluation in the **Federal Register** and provide for a 45-day comment period during which interested parties may submit comments to the FAA. The FAA will specifically solicit comments from the affected airport operator and affected local governments. A submission that is not complete will be returned to the aircraft operator with a letter indicating the deficiency, and no notice will be published.

(c) The FAA will review all submitted documentation and comments pursuant to the conditions of § 161.317. To the extent necessary, the FAA may confer with the aircraft operator, airport operator, and others known to have information material to the reevaluation and may convene an informal meeting for the purpose of gathering all facts relevant to a reevaluation finding.

§ 161.415 Reevaluation action.

(a) Upon completing the reevaluation, the FAA will issue appropriate orders regarding whether or not there is substantial evidence that the restriction meets the criteria in § 161.317.

(b) If the FAA's reevalaution confirms that the restriction meets the criteria, the restriction may remain as previously agreed to or approved. If the FAA's reevaluation concludes that the restriction does not meet the criteria, the FAA will withdraw a previous approval of the restriction issued under subpart D of this part or, with respect to a restriction reached by agreement under subpart B of this part, the FAA will specify which criteria are not met.

(c) The FAA will publish a notice of its reevaluation findings in the **Federal Register** and notify in writing the aircraft operator that petitioned the FAA for reevaluation and the affected airport operator.

§ 161.417 Notification of status of restrictions and agreements not meeting conditions of approval criteria.

If the FAA has withdrawn a previous approval made under subpart D of this

part, the Stage 3 restriction must be rescinded. The operator of the affected airport shall notify the FAA of the operator's action with regard to a restriction affecting Stage 3 aircraft operations that has been found not to meet the criteria of § 161.317. Agreements determined by the FAA not to meet conditions for approval may not be enforced with respect to Stage 3 aircraft operations.

Subpart F—Failure to Comply With This Part

§ 161.501 Scope.

This subpart describes the penalties for failing to comply with this part with respect to Airport Improvement Program funds and FAA approval to collect Passenger Facility Charges.

§ 161.503 Notice of potential restrictions on Airport Improvement Program funds and Passenger Facility Charges.

(a) No airport operator or public agency, as defined in 14 CFR part 158 shall receive revenues under the provisions of the Act or impose a Passenger Facility Charge under section 1113(e) of the FA Act of 1958, as amended, if the FAA determines the airport is imposing any noise or access restriction in violation of this part.

(b) Upon receipt of a complaint or other evidence that an airport operator or public agency has imposed a noise or access restriction that appears to be in violation of this part, the FAA will notify the airport operator or public agency in writing of the apparent violation.

(c) The airport operator or public agency shall have 30 days from the date of receipt of the written notice specified in paragraph (b) of this section to provide satisfactory evidence that it has complied with this part.

(d) If the airport operator or public agency fails to provide satisfactory evidence that it has complied as required by paragraph (c) of this section, the FAA will provide further written notification to the airport operator or public agency that the FAA intends to terminate any outstanding Airport Improvement Program grants and rescind approval of the authority to collect a Passenger Facility Charge. The FAA will also publish the notice of intent in the **Federal Register** and invite comment from interested parties.

(e) The FAA will review the comments. If the FAA determines that the airport operator or public agency is in violation of this part, and that no satisfactory corrective action has been taken, the FAA will notify the airport operator or public agency in writing of such determination to discontinue Airport Improvement Program funds and rescind the authority to collect Passenger Facility Charges. After notification, the following will occur:

(1) Airport Improvement Program funds will be discontinued immediately upon notice, including reimbursement for costs incurred prior to the notice;

(2) The FAA will not issue new grant agreements; and

(3) The termination date of authority to collect the Passenger Facility Charge will be not more than 30 days after such determination.

Issued in Washington, DC on February 25, 1991.

John M. Rodgers,

Director, Aviation Policy and Plans.

[FR Doc. 91-4786 Filed 2-25-91; 3:32 pm]

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federal register

Thursday
February 28, 1991

Part XII

Department of Transportation

Federal Aviation Administration

14 CFR Part 157

Construction, Alteration, Activation, and Deactivation of Airports; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 157

[Docket No. 25708, Amdt. No. 157-5]

RIN 2120-AB74

Construction, Alteration, Activation, and Deactivation of Airports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: This action delays, until August 30, 1991, the effective date of an amendment to part 157 of the Federal Aviation Regulations (FAR). That amendment was to become effective on February 27, 1991. The amendment establishes, in part, a requirement for operators to provide the FAA with notice prior to establishing (1) a temporary airport located within a specified distance of another airport, or (2) a temporary heliport located in a residential, business, or industrial area. Based on comments from aviation organizations and operators, the FAA has identified an ambiguity in the amendment. Specifically, the amendment may imply that a limited number of landings at a site that is not an established airport constitutes the establishment of a new airport which would require notice to the FAA. To eliminate any potential interpretation of the regulation to require notice in situations where notice is not needed or intended by the FAA, the agency is considering further action that would expressly limit the applicability of Part 157 and address the ambiguity. The FAA intends to issue that action in the near future.

EFFECTIVE DATE: February 26, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Richard K. Kagehiro, Air Traffic Rules Branch, ATP-230, Federal Aviation Administration, 800 Independence Aveue, SW., Washington, DC 20591; telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Background

On August 27, 1990, the FAA published Amendment No. 157-4 which revises, effective February 27, 1991, certain notice requirements associated with the construction, alteration, activation, and deactivation of airports (55 FR 34994). Amendment No. 157-4 was based on comments to a Notice of Proposed Rulemaking published on October 4, 1988 (Docket No. 25708, Notice No. 88-15; 53 FR 39062). Specifically, Amendment No. 157-4 revises part 157 (CFR 14 part 157) in the following manner: (1) It provides for a notice requirement for the establishment of, or a change to, a traffic pattern; (2) It clarifies the notice requirement for certain changes in the status of airport use; (3) It defines the term "private use of public lands or waters"; (4) It eliminates the term "personal use" as an airport use category; (5) It provides for an FAA determination void date; (6) It reduces the time that an airport proponent must notify the FAA of the completion of an airport project from 30 to 15 days; (7) It clarifies the scope of part 157 to include consideration of the safety of persons and property on the surface, and states that an FAA determination is not based on any environmental or land-use compatibility issue; (8) It incorporates certain editorial changes to simplify and clarify part 157; and (9) It establishes a reporting requirement for certain temporary airports and landing areas.

Based on comments from various aviation users and proponents, the FAA believes that § 157.1, Applicability (as revised by Amendment No. 157-4) may suggest that an operator who conducts a limited number of landings and takeoffs at a site that is not an established airport has established a new airport, which would require that operator to provide notice to the FAA. The FAA believes that the potential misunderstanding of the revised § 157.1 was created, in part, because of the difference in the wording and form of § 157.1 as proposed in Notice No. 88-15 and as it appeared in Amendment No. 157-4.

The Rule

To eliminate any potential reading of an agency regulation that suggests that notice is required in situations where notice is not needed or intended, the FAA is delaying the effective date of Amendment No. 157-4 to provide time for review and revision of the provisions involved to reduce the possibility of misunderstanding. The FAA intends to complete that action in the near future.

Effective Date

This amendment is adopted as a final rule to ensure that the public will not be unnecessarily inconvenienced by an apparent requirement for notice which the agency did not intend and does not require. Accordingly, I find that further notice and comment are unnecessary and contrary to the public interest, and this amendment is excepted from the general notice and comment requirements pursuant to 5 U.S.C. 553(b). For the same reasons, and because this amendment relieves a restriction, I find that good cause exists for making the amendment effective immediately.

Economic Evaluation

An analysis of the economic impact of the changes to part 157 resulting from Amendment No. 157-4 appears in the preamble discussion to that amendment (55 FR 34994; August 27, 1990). This delay of effective date does not affect that analysis; therefore, further regulatory evaluation is unnecessary. Additionally, the FAA believes that safety will not be affected by this delay of effective date because the time period of this delay is minimal, and the FAA is receiving voluntary reports of traffic pattern changes and temporary airport establishments from airport proponents, in addition to all other airport changes for which notice is required under existing part 157.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 was enacted by Congress to insure, among other things that small entities are not disproportionately affected by Government regulations. The RFA requires agencies to review rules which may have a "significant economic impact on a substantial number of small entities."

This rule will delay, until August 30, 1991, the effective date of an amendment to FAR part 157. The Regulatory Flexibility Determination that analyses the effect of the part 157 amendment is located in the docket to this rule. This delay in implementing the part 157 amendment will impose no additional costs to any party. Hence, the FAA certifies that the determination has not changed and that this rule will not have a significant economic impact, neither positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Federalism Implications

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 will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

This amendment delays the effective date of an agency regulation. It does not

change any reporting requirement associated with part 157.

Conclusion

For the reasons discussed in the preamble, and based on the regulatory analysis contained in the preamble to Amendment No. 157–4, the FAA has determined that this regulation is not major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, the FAA certifies that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in Part 157

Airports, Aviation safety.

The Amendment

For the reasons set forth above, 14 CFR part 157 of the Code of Federal Regulations is amended as follows:

PART 157—NOTICE OF CONSTRUCTION, ALTERATION, ACTIVATION, AND DEACTIVATION OF AIRPORTS

1. The authority citation for part 157 continues to read as follows:

Authority: Secs. 309, 313(a), 314, 72 Stat. 751; 49 U.S.C. 1350, 1354(a), 1355.

2. The effective date of the revision to 14 CFR part 157 (Amendment No. 157–4), February 27, 1991, is delayed. The new effective date is August 30, 1991.

Issued in Washington, DC, on February 22, 1991.

James B. Busey,

Administrator.

[FR Doc. 91–4787 Filed 2–25–91; 3:19 pm]

BILLING CODE 4910–13–M

federal register

Thursday
February 28, 1991

Part XIII

Department of Labor

Employment Standards Administration, Wage and Hour Division

29 CFR Parts 579 and 580

Child Labor: Civil Penalties for Violations; Final Rule

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Parts 579 and 580

Child Labor: Civil Penalties for Children

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This rule provides technical regulatory amendments regarding the assessment of increased civil money penalties for child labor violations. On November 5, 1990, the Omnibus Budget Reconciliation Act of 1990 amended the Fair Labor Standards Act of 1938 (FLSA) by providing, among other changes, increased civil money penalties for child labor violations. These technical regulatory changes specify that all violations of the FLSA's child labor provisions occurring on or after November 5, 1990, shall be subject to the new statutory civil money penalties in any assessments made by the Department on or after March 1, 1991.

EFFECTIVE DATE: February 28, 1991.

FOR FURTHER INFORMATION CONTACT: John R. Fraser, Acting Administrator, Wage and Hour Division, U.S. Department of Labor, room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523-8305. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

The Omnibus Budget Reconciliation Act of 1990 (Reconciliation Act), Public Law 101-508 (Nov. 5, 1990), amended section 16(e) of the FLSA (29 U.S.C. 216(e)) to raise to $10,000 the maximum civil money penalty to be assessed for each employee who is the subject of a violation of that Act's provisions relating to child labor. Also, section 16(e) of the FLSA was modified to direct that the civil money penalty funds assessed and collected for child labor violations be deposited in the general fund of the U.S. Treasury. Prior to the Reconciliation Act, section 16(e) of the FLSA provided for a civil money penalty not to exceed $1,000 for each child labor violation and included a provision whereby any such civil money penalties collected were to be applied toward reimbursement of the costs of determining the violations and assessing and collecting the penalties.

Section 3103 of the Reconciliation Act does not specify an effective date. The Department carefully considered a number of alternatives for implementing the higher penalties. Consideration was given to applying the new penalties in any investigation opened or active after November 5, 1990, the effective date of the Act, even if some or all of the violations occurred prior to that date. (The Wage and Hour Division's investigations generally cover a prior two-year period, except in the case of willful violations in which a three-year statute of limitations applies.) However, the Department was concerned about the time needed to effect changes in its penalty system. Also, under this approach, employers could find themselves subject to penalties which could not have been contemplated at the time of the violations.

The Department also considered delaying the effective date so that the new penalties would apply only to violations occurring on or after the effective date of this rule. However, in the absence of an express provision, an act of Congress is effective on the date it is signed into law by the President. *See United States* v. *Govrilovic*, 551 F.2d 1099, 1103 (8th Cir. 1977); *United States* v. *Kowal*, 596 F. Supp. 375, 376 (D. Conn. 1984). The Reconciliation Act was signed into law on November 5, 1990. Therefore, under established rules of statutory construction, the civil penalty provisions of that law should be construed to take effect on its enacted date, November 5, 1990.

Thus, the Department concluded that the new civil penalty provisions of the Reconciliation Act apply to all child labor violations occurring on or after November 5, 1990.

The Department recognizes that a single investigation may disclose child labor violations that occurred prior to November 5, 1990, and others that occurred on or after that date. Those violations occurring before November 5 will be subject to the penalties under the prior law and those occurring on or after November 5 will be subject to the new penalties.

Finally as a matter of policy, the Department has decided not to issue any assessments under the higher penalty structure before March 1, 1991. The old (lower) penalties are thus to be assessed until March 1, 1991. The Department used this transitional period to publicize the higher penalties. The Department will continue to work with employer groups to ensure that they are made fully aware of the new penalties.

In determining the amounts assessed after March 1, 1991, the Department will consider the size of the firm and the gravity of the violations (as required by the statute) as well as such factors as the duration of violations and the exposure of individual minors to multiple violations. It is anticipated that these considerations will result in relatively small increases in assessments for nonserious violations and much larger increases for very serious violations.

Paperwork Reduction Act

These rules contain no new reporting or recordkeeping requirements subject to the Paperwork Reduction Act. The FLSA information collection requirements have been approved by the Office of Management and Budget under the control number 1215-0017.

Executive Order 12291

This rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, no regulatory impact analysis is required.

Regulatory Flexibility Act

Because, as discussed below, no notice of proposed rulemaking is required for this rule under 5 U.S.C. 553(b), the requirements of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1165, 5 U.S.C. 601 *et seq.*, pertaining to regulatory flexibiltiy analysis, do not apply to this rule. See 5 U.S.C. 601(2).

Administrative Procedure Act

It has been determined, under 5 U.S.C. 553(b)(A), that technical amendments to regulations do not require prior public notice with an opportunity to comment. The changes being made to 29 CFR 579 and 29 CFR 580 do not affect the substantive requirements of the underlying laws and rules; nor do they modify or revoke existing rights or obligations, or establish new ones. Also, these technical changes merely conform the existing regulations to the new statutory provisions by indicating that increased penalties are authorized. Therefore, there is good cause to dispense with public comment on these new regulations. See 5 U.S.C. 553(b)(3)(B).

Also, it has been determined that good cause exists for waiving

requirements to delay the effective date of these technical amendments. See 5 U.S.C. 553(d). It is impracticable and unnecessary to provide for a delayed effective date because the statutory amendments went into effect on November 5, 1990, when the President signed the Reconciliation Act.

This document was prepared under the direction and control of John R. Fraser, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Parts 579 and 580

Child Labor, Law enforcement, Penalties.

For the reasons set forth above, 29 CFR parts 579 and 580 are amended as set forth below.

Signed at Washington, DC, on this 26th day of February, 1991.

Lynn Martin,

Secretary of Labor.

Samuel D. Walker,

Acting Assistant Secretary for Employment Standards.

John R. Fraser,

Acting Administrator, Wage and Hour Division.

PART 579—CHILD LABOR VIOLATIONS—CIVIL MONEY PENALTIES

1. The authority citation for part 579 is revised to read as follows:

Authority: 29 U.S.C. 203, 211, 212, 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App.; secs. 25, 29, 88 Stat. 72, 76; Secretary of Labor's Order No. 1371, 36 FR 8755; Sec. 3103, Pub. L. 101–508.

2. Part 579 is amended by adding a new § 579.9 to read as follows:

§ 579.9 Effective date.

The assessment of civil penalties, not to exceed $10,000 for each employee who was the subject of a violation of section 12 of the Act relating to child labor or of any regulation issued under that section, shall apply to all such violations occurring on or after November 5, 1990. A civil penalty not to exceed $1,000 per violation shall be applicable to any such violation occurring before November 5, 1990.

3. Section 579.1 is amended by revising paragraph (a) to read as follows:

§ 579.1 Purpose and scope.

(a) Section 16(e), added to the Fair Labor Standards Act of 1938, as amended, by the Fair Labor Standards Amendments of 1974, and as further amended by the Fair Labor Standards Amendments of 1989 and the Omnibus Budget Reconciliation Act of 1990, provides that—

(1) Any person who violates the provisions of section 12, relating to child labor, or any regulation issued under that section shall be subject to a civil penalty of not to exceed $10,000 for each employee who was the subject of such a violation.

(2) Any person who repeatedly or willfully violates section 6 or 7 shall be subject to a civil penalty of not to exceed $1,000 for each such violation.

(3) In determining the amount of any penalty under this subsection, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered.

(4) The amount of any penalty under this subsection, when finally determined, may be—

(i) Deducted from any sums owing by the United States to the person charged;

(ii) Recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary shall be represented by the Solicitor of Labor; or

(iii) Ordered by the court, in an action brought for a violation of section 15(a)(4) or a repeated or willful violation of section 15(a)(2), to be paid to the Secretary.

(5) Any administrative determination by the Secretary of the amount of any penalty under this subsection shall be final, unless within fifteen days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination that the violations for which the penalty is imposed occurred, in which event final determination of the penalty shall be made in an administrative proceeding after opportunity for hearing in accordance with section 554 of title 5, United States Code, and regulations to be promulgated by the Secretary.

(6) Except for civil penalties collected for violations of section 12, sums collected as penalties pursuant to this section shall be applied toward reimbursement of the costs of determining the violations and assessing and collecting such penalties, in accordance with the provision of section 2 of an Act entitled "An Act to authorize the Department of Labor to make special statistical studies upon payment of the cost thereof, and for other purposes" (29 U.S.C. 9a).

(7) Civil penalties collected for violations of section 12 shall be deposited in the general fund of the Treasury.

* * * * *

4. In § 579.5, paragraph (a) is revised to read as follows:

§ 579.5 Assessing the penalty.

(a) The administrative determination of the amount of the civil penalty, of not to exceed $10,000 for each employee who was the subject of a violation of section 12 of the Act relating to child labor or of any regulation issued under that section, shall be based on the available evidence of the violation or violations and shall take into consideration the size of the business of the person charged and the gravity of the violation as provided in paragraphs (b) through (d) of this section.

* * * * *

5. In § 579.8, paragraph (c) is revised to read as follows:

§ 579.8 Collection and recovery of penalty.

* * * * *

(c) As provided in section 16(e) of the Act, the sums collected for violations of section 12 of the Act shall be deposited in the general fund of the U.S. Treasury.

PART 580—CIVIL PENALTIES FOR CHILD LABOR VIOLATIONS—RULES OF PRACTICE FOR ADMINISTRATIVE PROCEEDINGS

1. The authority citation for part 580 is revised to read as follows:

Authority: 29 U.S.C. 9a, 203, 211, 212, 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App.; secs. 25, 29, 88 Stat. 72, 76; Secretary of Labor's Order No. 13–71, 36 FR 8755; 5 U.S.C. 500, 503, 551, 559; Sec. 9, Pub. L. 101–157, 103 Stat. 938; sec. 3103, Pub. L. 101–508.

2. In § 580.1, paragraph (a) is amended to read as follows:

§ 580.1 Applicability of rules; definitions.

(a) This part provides the rules of practice for administrative proceedings relating to determination of civil penalties for violations of the child labor provisions of the Fair Labor Standards Act of 1938, as amended by the Fair Labor Standards Amendments of 1974 (Pub. L. 93–259, 88 Stat. 55) and by the Omnibus Budget Reconciliation Act of

1990 (Pub. L. 101–508), and of the regulations issued thereunder. See also part 579 of this chapter for rules governing the issuance of notices of penalties for violations of section 12 of the Act and of the regulations issued under such section relating to child labor.

* * * * *

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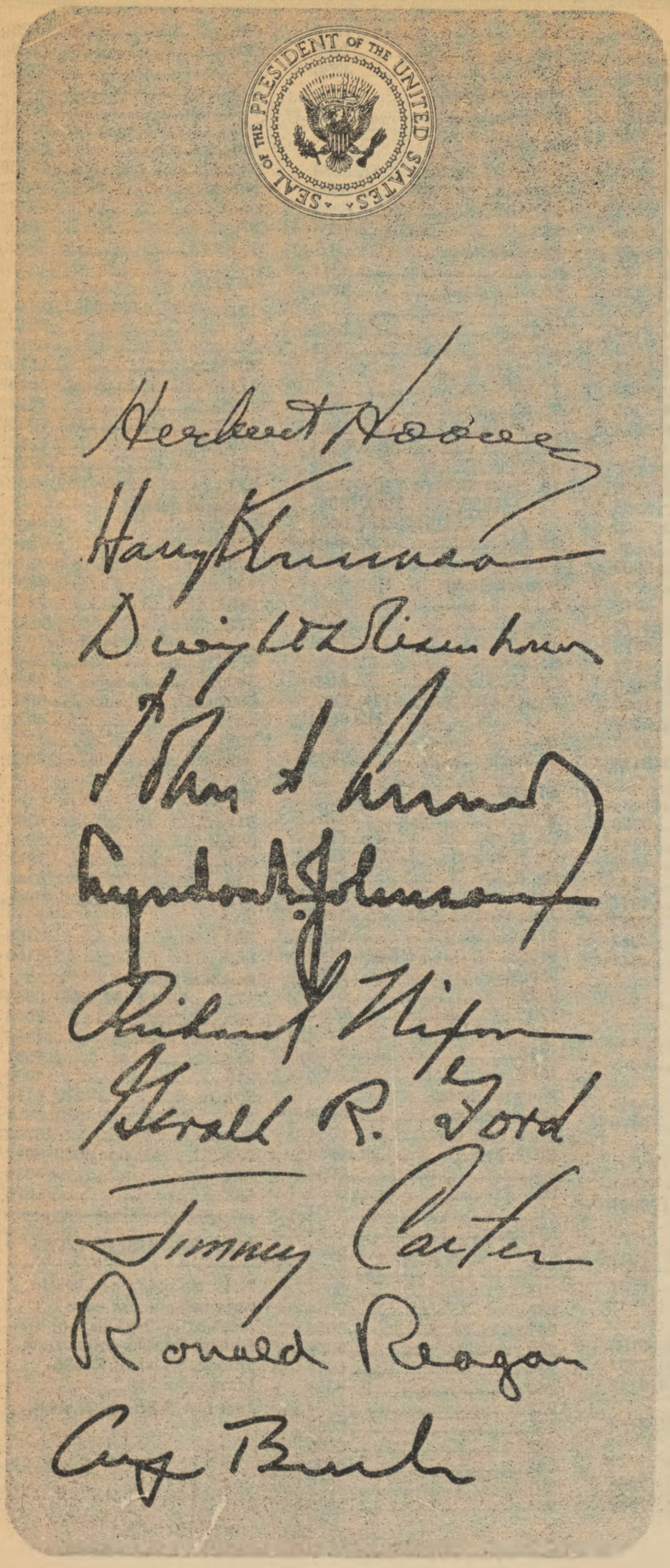

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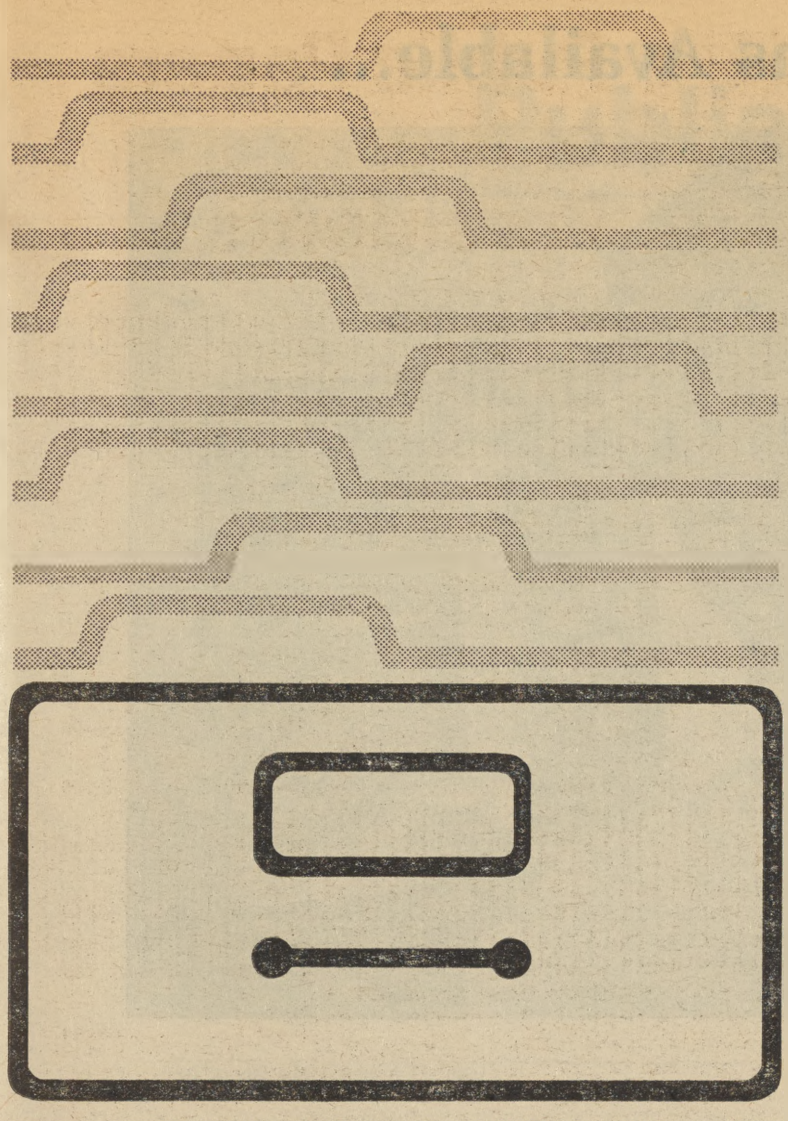

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in the Code of Federal Regulations (CFR)

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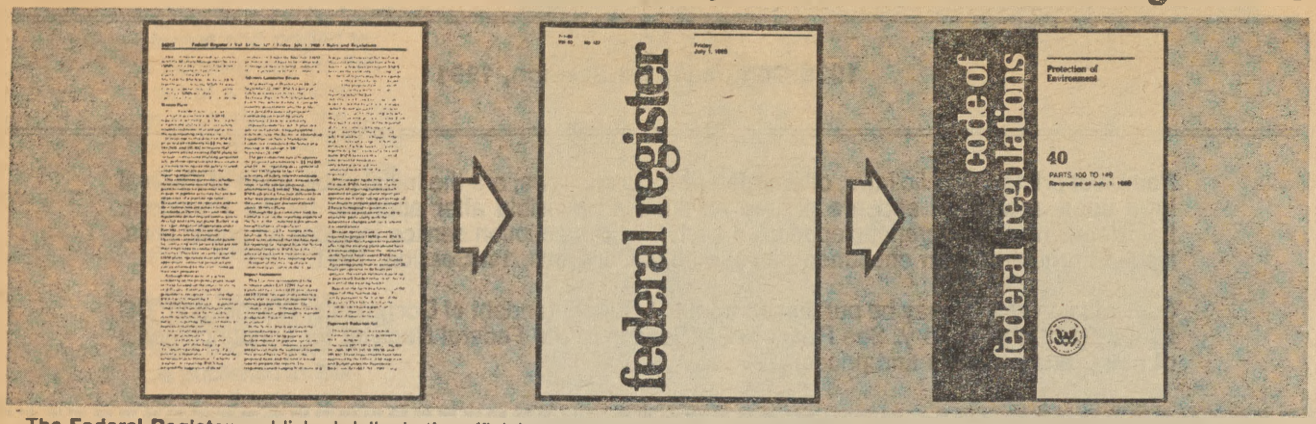

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